



**LEE COUNTY PORT AUTHORITY
AIRPORTS SPECIAL MANAGEMENT COMMITTEE**

MEETING AGENDA

1:30 PM

October 19, 2021

**Training and Conference Center
Southwest Florida International Airport**

Pledge of Allegiance

Public Comment on Consent and Administrative Agenda

Consent Agenda

Administrative Agenda

Executive Director Items

Port Attorney Items

Airports Special Management Committee Items

Adjourn

CONSENT AGENDA

ADMINISTRATION – Brian McGonagle

1. Request Committee approve the minutes of the August 17, 2021 Airports Special Management Committee (ASMC) meeting.
Term:
N/A
Funding Source:
N/A
2. Approve the Joint and ASMC meeting date schedule for the calendar year 2022.
Term:
N/A
Funding Source:
N/A
3. Request Board approve a budget amendment to the FY 2021-22 Lee County Port Authority Budget to properly reflect the issuance of the Lee County Airport Revenue Bonds Series 2021(B) AMT.
Term:
N/A
Funding Source:
N/A
4. Request Board approve a two-year extension to the professional service agreement with Ricondo & Associates and the Lee County Port Authority.
Term:
November 4, 2021 - November 3, 2023
Funding Source:
Net revenues from the normal operation of the Southwest Florida International Airport
5. Request Board approve an “On Airport Land Lease” with the Federal Aviation Administration.
Term:
October 1, 2021 to September 30, 2031.
Funding Source:
N/A
6. Request Board approve a “First Amendment to Lease of Terminal Space at Southwest Florida International Airport” with American Sales and Management Organization, LLC (d/b/a Eulen America).
Term:
commenced March 1, 2021; month-to-month
Funding Source:
N/A

CONSENT AGENDA - Continued**ADMINISTRATION – Brian McGonagle**

7. Request Board approve a “Nonparticipating Airline Airport Use Permit” agreement with Air Transat A.T. Inc.
Term:
from December 1, 2021, until terminated.
Funding Source:
N/A
8. Request Board approve a “Ground Lease for Construction and Operation of an Air Freight Building at Southwest Florida International Airport” with AFCO Cargo RSW, LLC.
Term:
25 years, plus two (2) options to extend for 5 years each
Funding Source:
N/A
9. Request Board approve a proposed sublease from Ft. Myers Airport Plaza, LLC, to Airport RSW Donuts LLC to operate a Dunkin’ franchise.
Term:
10 years, plus one option to extend by 5 years
Funding Source:
N/A
10. Request Board approve a “Page Field Office Lease and Aeronautical Operator Agreement” with The Sundowners Inc.
Term:
month-to-month, commenced April 1, 2021
Funding Source:
n/a
11. Request Board approve a “Second Amendment to Lease of Hangars at Page Field” with Paragon Airplane Leasing Co.
Term:
10 years, plus two potential options to extend for an additional 5 years each.
Funding Source:
N/A
12. Request Board consent to assignment of a Lease Agreement from Societe Internationale De Telecommunications Aeronautiques, a Belgium Co-operative, to SITA Information Networking Computing USA Inc., a Delaware corporation.
Term:
commenced September 9, 2005; continues month-to-month
Funding Source:
N/A

CONSENT AGENDA – Continued

AVIATION – Steven Hennigan

13. Request Board award RFB 21-33MLB Generator Inspections for the Lee County Port Authority, to LJ Power Inc., the lowest, most responsive, responsible bidder in the annual estimated amount of \$22,790 per the terms and conditions of the contract.

Term:

One (1) initial three-year term with one (1) additional two-year renewal period with services to commence on or around November 15, 2021.

Funding Source:

General Airport Operating Revenues collected during the normal operation of Southwest Florida International Airport. Funds are available in Account String WJ5100041200.503490 - Other Contracted Services.

14. Request Board approve Second Amendment to 2019-2022 Collective Bargaining Agreement between Lee County Port Authority and Southwest Florida Professional Fire Fighters & Paramedics, Local 1826/District 10, I.A.F.F., Inc., amending Article 17-Pay Plan and Article 23-Incentive Pay.

Term:

One Year

Funding Source:

NA

DEVELOPMENT – Mark Fisher

15. Request Board approve Interlocal Agreement for Coordinated Tall Structure Permitting with the Village of Estero.

Term:

Continue unless terminated, per Section 163.01, F.S.

Funding Source:

N/A

16. Request Board approve a Contract Amendment with Manhattan Construction (Florida), Inc. clarifying and restating the contract term for the RSW Terminal Expansion Project as previously approved by the Board.

Term:

Contract Term extended through January 31, 2025.

Funding Source:

N/A

17. Request Board approve a Contract Amendment with Atkins North America, Inc. clarifying and restating the contract term for the RSW Terminal Expansion Project as previously approved by the Board.

Term:

Contract Term extended through January 31, 2025.

Funding Source:

N/A

CONSENT AGENDA – Continued

DEVELOPMENT – Mark Fisher

18. Request Board approve a Contract Amendment with Kimley-Horn & Associates, Inc. clarifying and restating the contract term for the RSW Rehabilitation of Airside Pavement project as previously approved by the Board.

Term:

Contract Term extended through Contract Term extended through March 1, 2022.

Funding Source:

N/A

ATTORNEY – Mark Trank

19. Request Board approve natural gas line easement to Peoples Gas System, a Division of Tampa Electric Company, to provide natural gas service to the Qdoba Restaurant Corporation leased property at Page Field Commons

Term:

N/A

Funding Source:

N/A

ADMINISTRATIVE AGENDA**ADMINISTRATION – Brian McGonagle**

20. Request Board approve the first amendment to the service provider agreement with UDT Corporation exercising the option to extend the agreement's term for a period of three additional years.

Term:

Three Years commencing January 17, 2022 – January 16, 2025

Funding Source:

General Airport Operating Revenues collected during the normal operation of Southwest Florida International Airport, Account Number VF5132541200.3190, Information Technology

21. Request Board approve the use of Florida State contract 43220000-NASPO-19-ACS to purchase network equipment needed for the Terminal Expansion Project at Southwest Florida International Airport in an amount not to exceed \$945,031 which includes 10% contingency.

Term:

TBD

Funding Source:

RSW Construction account string 20859541236.506542

22. Request Board (1) approve the use of Contract 081419CDW to purchase Technology Catalog Solutions from CDW-G Government, LLC. through a Sourcwell cooperative agreement and (2) Request Board authorize the Executive Director to exercise the optional one year renewal at the same terms and conditions as the initial contract.

Term:

From execution of agreement until 10/30/2023 with an optional one-year (1) renewal

Funding Source:

General Airport operating revenues collected during the normal operations of the Airport, account string VF5132541200.503460 Information Technology.

23. Request Board (1) approve use of Contract 2018011-01 to purchase Information Technology Solutions and Services from CDW-G Government, LLC. through Omnia Partners cooperative agreement and (2) Request Board authorize the Executive Director to exercise the optional two one (1) year renewals at the same terms and conditions as the initial contract.

Term:

From execution of agreement until 2/28/2023 with two one (1) year options until 2/28/2025.

Funding Source:

General Airport operating revenues collected during the normal operations of the Airport, account string VF5132541200.505280 Information Technology

ADMINISTRATIVE AGENDA – Continued

ADMINISTRATION – Brian McGonagle

24. Request Board approve an amendment to the “Lease of TSA Office Space at Southwest Florida International Airport’s Midfield Terminal” with the United States of America.
Term:
through April 25, 2022
Funding Source:
N/A

25. Request Board approve a Third Amendment to “Airline-Airport Use and Lease Agreement with United Airlines, Inc.”
Term:
extending from September 30, 2021, to September 30, 2023
Funding Source:
N/A

26. Request Board approve a Sixth Amendment to “Airline-Airport Use and Lease Agreement” with Spirit Airlines, Inc.
Term:
extending from September 30, 2021, to September 30, 2023
Funding Source:
N/A

27. Request Board approve a Fifth Amendment to “Airline-Airport Use and Lease Agreement” with American Airlines, Inc.
Term:
extending from September 30, 2021, to September 30, 2023
Funding Source:
N/A

28. Request Board approve a participating airline “Airline-Airport Use and Lease Agreement” with Sun Country, Inc.
Term:
October 1, 2021 to September 30, 2023
Funding Source:
N/A

29. Request Board approve the key terms and proposed concepts to Paradies for the terminal concession program.
Term:
N/A
Funding Source:
N/A

ADMINISTRATIVE AGENDA – Continued

ADMINISTRATION – Brian McGonagle

30. Request Board approve the key terms and proposed concepts to Host for the terminal concession program.

Term:

N/A

Funding Source:

N/A

AVIATION – Steven Hennigan

31. Request Board approval to 1) enter into a purchase agreement with Allen Enterprises, Inc. for the supply and delivery of ADB Safegate Airfield Lighting and Related Airfield Parts on an as-needed basis to meet operational requirements at Southwest Florida International Airport and Page Field Airport. 2) Request board authorize the executive Director to exercise the option to renew the agreement for one additional two-year period at the same terms and conditions as the initial agreement.

Term:

Three-year term with one (1) additional two-year renewal period.

Funding Source:

General Airport Operating Revenues collected during the normal operation of Southwest Florida International Airport, account WJ5300041200.504655 and account UH5120041203.504655 for Page Field Airport - Repairs and Maintenance – Parts for building and equipment maintenance.

32. Recommend Board award RFB 21-46CDE, Purchase and Delivery of Aircraft Rescue and Fire Fighting (ARFF) Crash Truck for Lee County Port Authority, to the lowest, responsive, responsible bidder, Rosenbauer Minnesota, LLC for the base bid amount of \$915,369 and in addition approve the purchase of the items listed in Appendix B in the amount of \$215,992 including contingency, for a total cost of \$1,131,361.

Term:

NA

Funding Source:

Federal Aviation Administration Grant 3-12-0135-059-2021; Florida Department of Transportation Grant 429511-1-94-01; and General airport operating revenues collected during the normal operation of the Airport. Account String: 20862141231.506430

ADMINISTRATIVE AGENDA – Continued

DEVELOPMENT – Mark Fisher

33. Request Board approve a federal grant (Airport Improvement Program No. 3-12-0135-059-2021) in the amount of \$915,368 from the Federal Aviation Administration towards the acquisition of an Aircraft Rescue and Fire Fighting Crash Vehicle for the Southwest Florida International Airport.

Term:

N/A

Funding Source:

N/A

AVIATION – Mark Fisher

34. Request the Board approve a Service Provider Agreement with Chris-Tel Construction to provide On-Call General Repairs, Maintenance and Project Services (acting as general contractor) and 2) authorize the Executive Director, or designee, to approve expenditures up to \$100,000 per project, not to exceed \$1 million annually for the term of the agreement.

Term:

Five (5) years

Funding Source:

Account WJ5422941200.503490, Other Contracted Services

EXECUTIVE DIRECTOR ITEMS

PORT ATTORNEY ITEMS

COMMENTS FROM THE CHAIR OF THE ASMC

ADJOURN

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Committee approve the minutes of the August 17, 2021 Airports Special Management Committee (ASMC) meeting.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: N/A</p> <p>4. WHAT ACTION ACCOMPLISHES: Approves minutes for August 17, 2021 ASMC meeting pursuant to Florida Statute §286.011 and LCPA Policy.</p>	<p>5. CATEGORY: 1. Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: N/A</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)</p> <p>NAME <u>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p>
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10. **BACKGROUND:**

Attachment:
ASMC Meeting Minutes - 8/17/2021 - Draft

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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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MINUTES

AIRPORTS SPECIAL MANAGEMENT COMMITTEE MEETING

AUGUST 17, 2021

A meeting of the Airports Special Management Committee (ASMC) was held this date, August 17, 2021, in the Training and Conference Center at Southwest Florida International Airport, with the following members present:

Noel Andress (Chair)
John Goodrich
Randy Krise
Robbie Roepstorff
Scott Cameron
Dana Carr

Committee member Fran Myers was absent for the entire meeting.

Noel Andress called the meeting to order at 1:30 p.m. followed by the Pledge of Allegiance.

On file (electronically) in the Communications and Marketing Office: Monthly Project Summary Reports for July and August and the Procurement Status Report for August.

Public Comment on Consent or Administrative Agenda Items: No public comments on the Consent or Administrative agenda.

The following are Consent Agenda items pulled for discussion:

Noel Andress (Chair)	None
John Goodrich	None
Randy Krise	None
Robbie Roepstorff	None
Scott Cameron	None
Dana Carr	None

CONSENT AGENDA - A motion to approve the Consent agenda was made by John Goodrich, seconded by Randy Krise; called and carried with Fran Myers absent (6-0).

CONSENT AGENDA ITEMS

ADMINISTRATION

1. Request Committee approve the minutes of the June 15, 2021 Airports Special Management Committee (ASMC) meeting.
Term:
N/A
Funding Source:
N/A
2. Request Board approve a Budget Amendment to the FY 2020-21 Lee County Port Authority Operating Fund to increase both revenue and expenses for Page Field
Term:
N/A
Funding Source:
41203
3. Request Board approve a “First Amendment to Airline-Airport Use and Lease Agreement with Frontier Airlines, Inc.”
Term:
extending from September 30, 2021, to September 30, 2023
Funding Source:
N/A
4. Request Board approve an “Aircraft Parking Agreement” with Olympus Aviation LLC.
Term:
month-to-month commencing May 1, 2021
Funding Source:
N/A
5. Request Board approve a Fifth Amendment to “Airline-Airport Use and Lease Agreement with Southwest Airlines Co.”
Term:
extending from September 30, 2021, to September 30, 2023
Funding Source:
N/A
6. Request Board approve a “Permit Agreement For Provision of Into-Plane Fueling Service at Southwest Florida International Airport” with FSM Group, LLC.
Term:
month-to-month, beginning August 1, 2021
Funding Source:
N/A

7. Request Board approve a “Lease of Terminal Space at Southwest Florida International Airport” with FSM Group, LLC.
Term:
month-to-month, beginning August 1, 2021
Funding Source:
N/A
8. Request Board approve an “Off-Airport Parking Company Airport Use Permit Agreement” with Ft Myers Airport Parking LLC.
Term:
month-to-month beginning August 1, 2021
Funding Source:
N/A
9. Request Board approve the Authority’s Shared Tenant Services business plan for airlines.
Term:
NA
Funding Source:
NA

COMMUNICATIONS & MARKETING

10. Request Board approve a Professional Services Agreement with Ailevon Pacific Aviation Consulting, LLC for Air Service Consultant Services for Southwest Florida International Airport.
Term:
Three (3) years with optional two (2) one-year extensions
Funding Source:
General Airport Operating Revenue Fund - WC5121841200.503190, Air Service Development

AVIATION

11. Request Board approve a three-year collective bargaining agreement effective October 1, 2021 through September 30, 2024, between Lee County Port Authority and Southwest Florida Professional Fire Fighters & Paramedics, Local 1826, District 22, I.A.F.F., Inc.
Term:
Three (3) years commencing October 1, 2021 through September 30, 2024.
Funding Source:
NA
12. Request Board Approval of Voluntary Cooperation Agreement between Lee County Sheriff’s Office and Lee County Port Authority Police Department
Term:
Termination upon written execution of chief executive officers and receipt of delivery.
Funding Source:
No funding required

13. Request Board award RFB 21-32MLB: Palm Frond Trimming at Southwest Florida International Airport to P&T Lawn and Tractor Service, Inc., the lowest, most responsive, responsible bidder in the estimated annual amount of \$41,200 per the terms and conditions of the contract, and authorize the Executive Director to approve and execute the contract renewal terms.
- Term:**
One initial three-year term with one (1) additional two-year renewal period with services to commence on or around October 01, 2021.
- Funding Source:**
General Airport Operating Revenues collected during the normal operation of Southwest Florida International Airport. Funds are available in Account String WJ5300041200.503490, Other Contracted Services.
14. Request Board award RFB 21-35MLB Airfield Runway Photometric Testing at the Southwest Florida International Airport, to Malms Navaid Inc., the lowest, most responsive, responsible bidder in the annual estimated amount of \$27,700 per the terms and conditions of the contract, and authorize the Executive Director to approve and execute contract renewal terms.
- Term:**
One (1) initial three-year term with two (2) additional one-year renewal periods with services to commence on or about October 01, 2021.
- Funding Source:**
General Airport Operating Revenues collected during the normal operation of Southwest Florida International Airport. Funds are available in Account String WJ5300041200.503490, Other Contracted Services.
15. Request Board award RFB 21-15MLB: Purchase & Delivery of Electric Motors for the Lee County Port Authority to Bob Dean Supply, Inc., the lowest, most responsive, and responsible bidder with an estimated annual amount of \$35,000 per the terms and conditions of the contract, and authorize the Executive Director to approve and execute the contract renewal terms.
- Term:**
One initial three-year term with one (1) additional two-year renewal period with services to commence on or around October 01, 2021.
- Funding Source:**
General Airport Operating Revenues collected during the normal operation of Southwest Florida International Airport. Funds are available in Account String WJ5100041200.504655, Repairs and Maintenance - Parts.

DEVELOPMENT

16. Request Board approve a contract amendment to Owen-Ames-Kimball Company (OAK), General Construction Manager/General Contractor to extend the contract time to potentially complete the ongoing Rehabilitation of Roads at the Southwest Florida International Airport.
- Term:**
Extended 3 years.
- Funding Source:**

N/A.

17. Request Board approve a contract amendment to Johnson Engineering, Design Manager, to extend the contract time to potentially complete the Rehabilitation of Roads at the Southwest Florida International Airport.

Term:

Extended 3 years.

Funding Source:

N/A.

ATTORNEY

18. Request Board approve grant of permanent non-exclusive underground utility easement to Florida Power & Light Company to provide electrical service to the FMY Holdings, LLC hangar at Page Field Airport.

Term:

N/A

Funding Source:

N/A

19. Request Board approval of an Access Road Easement to South Florida Water Management District for nonexclusive access to the County-owned Florida Gulf Coast University Mitigation Site for vehicular and pedestrian access, ingress and egress, and maintenance purposes.

Term:

N/A

Funding Source:

N/A

ADMINISTRATIVE AGENDA ITEMS

ADMINISTRATION

20. Request Board approve a concurring resolution approving the issuance of Lee County Airport Revenue Bonds Series 2021B (AMT) for \$244,129,519 to finance a portion of the terminal expansion project and to authorize payment of the related costs of issuance.

Term:

N/A

Funding Source:

Fund 41278

From the podium, Brian McGonagle, deputy executive director of administration, gave a brief summary to update the Committee on the item then introduced Kevin McPeek, Financial Advisor for PFM, who walked through the parameters of the deal. There was a lengthy discussion and a number of questions were asked by the Committee members including how the lowest interest rates are obtained, what the contingency plan or “Plan B” is if the bonds don’t sell, the role of the underwriter, Bank of America, and the estimated sale date. Executive Director Ben Siegel, Brian McGonagle and Mr. McPeek responded to all questions to the satisfaction of all Committee members.

A motion to approve the item was made by Randy Krise, seconded by Robbie Roepstorff called and carried with Fran Myers absent (6-0).

21. Request Board approve a budget amendment to the FY 2020-21 Lee County Authority Budget for the issuance of the Lee County Revenue Bonds Series 2021(B)

Term:

N/A

Funding Source:

41278

From the podium, Brian McGonagle, deputy executive director of administration, gave a brief summary to update the Committee on the item. There was a brief discussion with questions involving where the funds get deposited, interest on the money, the treasurer and investing. Brian McGonagle responded to all questions to the satisfaction of all Committee members.

A motion to approve the item was made by Scott Cameron, seconded by John Goodrich called and carried with Fran Myers absent (6-0).

22. Request Board approve a “Land Lease for Construction of a Corporate Hangar Building at Southwest Florida International Airport” with CapStone Holdings Inc.

Term:

20 years, with two options to extend by five years each

Funding Source:

N/A

From the podium, Brian McGonagle, deputy executive director of administration, gave a brief summary to update the Committee on the item. Mr. Krise asked if this was a corporate hangar and Brian McGonagle responded that it was and the hangar was for ae corporate plane. Mr. Siegel, executive director, clarified that the hangar was to be built at RSW. There were no further questions from the Committee members.

A motion to approve the item was made by Randy Krise, seconded by Scott Cameron called and carried with Fran Myers absent (6-0).

COMMUNICATIONS & MARKETING

23. Request Board approve the renewal of the Air Service Incentive Plan.

Term:

Extend Plan to September 30, 2024

Funding Source:

Net operating revenues from the normal operation of Southwest Florida International Airport.

From the podium, Vicki Moreland, chief communications & marketing officer, gave a brief summary to update the Committee on the item. There were no questions from the Committee members.

A motion to approve the item was made by Scott Cameron, seconded by John Goodrich called and carried with Fran Myers absent (6-0).

AVIATION

24. Request Board approve the purchase and delivery of fleet and equipment repair parts from NAPA Auto Parts in the approximate annual amount of \$130,000, piggybacking the terms in Sourcewell Contract for aftermarket vehicle parts and supplies (32521-GPC).

Term:

One (1) - Four (4) year term with no renewal options that expires on May 19, 2025.

Funding Source:

General Airport Operating Revenues collected during the normal operation of Southwest Florida International Airport and Page Field. Funds are available in Account String WJ5100041200.504655, Repairs and Maintenance - Parts, for RSW and Account String UH5120041203.504655, Repairs and Maintenance - Parts, for FMY.

From the podium, Steve Hennigan, deputy executive director of aviation, gave a brief summary to update the Committee on the item. There was a discussion and a number of questions were asked by the Committee members including garage facilities at RSW, percentage discounts, annual spend on parts and repair, percentage increase over the previous contract and the Page Field cost component. Mr. Hennigan and James Furiosi, department director of maintenance, responded to all questions to the satisfaction of all Committee members.

A motion to approve the item was made by John Goodrich, seconded by Dana Carr called and carried with Fran Myers absent (6-0).

25. Request Board approve the Aircraft Administration and Flight Services Agreement with Brown Aviation for the Authority's aircraft and authorize expenditure not to exceed \$500,000 over the 5-year term of the Agreement.

Term:

Five (5) years with no option for renewal.

Funding Source:

Acct. WJ5100041200.503190

From the podium, Steve Hennigan, deputy executive director of aviation, gave a brief summary to update the Committee on the item. There was a brief discussion involving contractual services being provided and Steve Hennigan responded to all questions to the satisfaction of all Committee members.

A motion to approve the item was made by John Goodrich, seconded by Dana Carr called and carried with Fran Myers absent (6-0).

26. Request Board approve LCPA to piggyback the State of Florida Department of Transportation Airport Pavement Marking Condition Assessment Services and Airport Pavement Marking and Related Services Contract DOT-RFP-21-9019-CA.

Term:

Two year term to commence after 10/01/2021 and expiring two years after the contract start date

Funding Source:

General Airport Operating Revenues collected during the normal operation of

Southwest Florida International Airport. Funds are available in Account String WJ5300041200.503490, Other Contracted Services, contingent upon approval of the associated fiscal year operating budgets not to exceed \$250,000 annually.

From the podium, Steve Hennigan, deputy executive director of aviation, gave a brief summary to update the Committee on the item. There was a brief discussion and questions regarding piggyback contracts. Steve Hennigan responded to all questions to the satisfaction of all Committee members.

A motion to approve the item was made by Robbie Roepstorff, seconded by John Goodrich Robbie Roepstorff called and carried with Fran Myers absent (6-0).

27. Request Board approval for the purchase of seven (7) Ford fleet vehicles from Tamiami Ford under Collier County contract number 19-7522 and eight (8) Chevrolet fleet vehicles from Alan Jay Automotive under Sourcewell contract number 060920-NAF for the total amount of \$800,114 for all quotes received; and allow the Executive Director to approve up to an additional 15% contingency amount or \$120,017 not to exceed a total cost of \$920,131

Term:

One-time purchase

Funding Source:

General Airport Operating Revenues derived from airport user fees in the estimated amount of \$920,131 from account string VB5131541200-506430.

From the podium, Steve Hennigan, deputy executive director of aviation, gave a brief summary to update the Committee on the item. There was a brief discussion and questions were asked by the Committee members including use of regional and national contracts verses a bidding process, local vendor participation and the additional 15 percent contingency to cover supply chain issues due to COVID-19. Executive Director Ben Siegel and Steve Hennigan responded to all questions to the satisfaction of all Committee members.

A motion to approve the item was made by John Goodrich, seconded by Robbie Roepstorff called and carried with Fran Myers absent (6-0).

28. Request Board rank proposals submitted for RFP 21-44NJD On-call General Repairs, Maintenance and Project Services (acting as General Contractor).

Term:

5 years

Funding Source:

N/A

From the podium, Mark Fisher, deputy executive director of development, gave a brief summary to update the Committee on the item, stating staff recommends the ASMC rank firms in accordance with Staff Evaluation Committee's review and scoring of the proposals. Mr. Krise recommended approval of staff recommendation.

A motion to approve the item was made by Randy Krise, seconded by John Goodrich called and carried with Fran Myers absent (6-0).

DEVELOPMENT

29. Request Board approve a federal grant (Other Transaction Agreement - OTA) between the United States of America, as represented by the Transportation Security Administration

(TSA), and the Lee County Port Authority for \$2,437,018.52 to partially reimburse the Port Authority for costs related to the baggage handling system for the Midfield Terminal

Term:

N/A

Funding Source:

N/A

From the podium, Mark Fisher, deputy executive director of development, gave a summary to update the Committee on the item. There were no questions from the Committee members.

A motion to approve the item was made by John Goodrich, seconded by Scott Cameron called and carried with Fran Myers absent (6-0).

30. Request Board authorize a Contract Amendment with Manhattan Construction (Florida), Inc. in the amount of \$267,162,220.72 to perform Construction Manager/General Contractor services associated with the Terminal Expansion Project at Southwest Florida International Airport (RSW); and approve a Total Project Budget in the amount of \$331,586,401.18.

Term:

Funding Source:

Florida Department of Transportation (FDOT) Aviation Grant 441981 1 94 02; Florida Department of Transportation (FDOT) Strategic Intermodal System (SIS) Grant 441981 1 94 01; Passenger Facility Charges (PFC) Pay-Go and Bond Funds; Airport Revenue Bond Funds; and Lee County Port Authority (local) construction funds.

From the podium, Mark Fisher, deputy executive director of development, gave a summary to update the Committee on the item. There was a lengthy discussion and a number of questions were asked by the Committee members. Mr. Fisher responded to questions concerning funding and grant funding eligibility, contingency plans, the Notice-to-Proceed date and project delays due to COVID-19. Mr. Fisher introduced John Reyhan, President of Manhattan Construction, who responded to questions including supply chain disruptions causing inflated prices and shortages and demand outpacing the ability to supply product. However, he noted pricing for this project was secured. Mr. Reyhan also stated the greater challenge will be the availability of the labor force. Executive Director Ben Siegel, Mark Fisher and Mr. Reyhan responded to all questions to the satisfaction of all Committee members.

A motion to approve the item was made by Randy Krise, seconded by John Goodrich called and carried with Fran Myers absent (6-0).

31. Request Board authorize a Contract Amendment with Atkins North America, Inc., in the amount of \$11,183,843.82 to perform Construction Administration services associated with the Terminal Expansion Project at RSW.

Term:

Through construction completion (expected January 2025).

Funding Source:

Florida Department of Transportation (FDOT) Aviation Grant 441981 1 94 02;

Florida Department of Transportation (FDOT) Strategic Intermodal System (SIS) Grant 441981 1 94 01; Passenger Facility Charges (PFC) Bond Funds; Airport Revenue Bond Funds

From the podium, Mark Fisher, deputy executive director of development, gave a summary to update the Committee on the item. There was a brief discussion and Mark Fisher responded to all questions to the satisfaction of all Committee members.

A motion to approve the item was made by Randy Krise, seconded by Scott Cameron called and carried with Fran Myers absent (6-0).

32. Request Board authorize a Contract Amendment with EG Solutions, Inc., in the amount of \$5,761,689.48 for Construction Engineering & Inspection Services for the Terminal Expansion Project at RSW.

Term:

Through construction completion (expected January 2025).

Funding Source:

Florida Department of Transportation (FDOT) Aviation Grant 441981 1 94 02; Florida Department of Transportation (FDOT) Strategic Intermodal System (SIS) Grant 441981 1 94 01; Passenger Facility Charges (PFC) Bond Funds; Airport Revenue Bond Funds

From the podium, Mark Fisher, deputy executive director of development, gave a summary to update the Committee on the item. There was a brief discussion. Mr. Krise and Ms. Roepstorff asked what EG Solutions was inspecting. Mr. Fisher explained the role of the firm was to inspect that the work is being done according to the design plans. There were no further questions from the Committee members.

A motion to approve the item was made by John Goodrich, seconded by Scott Cameron called and carried with Fran Myers absent (6-0).

33. Request Board approve a federal grant (Airport Improvement Program Grant Agreement No. 3-12-0135-058-2021) from the Federal Aviation Administration in the amount of \$1,999,776 for the Southwest Florida International Airport's Master Plan Study update.

Term:

N/A

Funding Source:

N/A

From the podium, Mark Fisher, deputy executive director of development, gave a summary to update the Committee on the item. There were no questions from the Committee members.

A motion to approve the item was made by Scott Cameron, seconded by Robbie Roepstorff called and carried with Fran Myers absent (6-0).

34. Request Board endorse RSW aviation activity forecasts to be used in the RSW Master Plan Update.

Term:

N/A

Funding Source:

N/A

Term:

10/1/2021 - 9/30/2022

Funding Source:

N/A

From the podium, Mark Fisher, deputy executive director of development, gave a presentation and summary to update the Committee on the item before introducing consultant Marc Champigny, Service Group Manager/Aviation Planning for C&S Engineers, who gave additional presentation details. Mr. Fisher and Mr. Champigny responded to questions from the Committee members to the satisfaction of all Committee members.

A motion to approve the item was made by John Goodrich, seconded by Robbie Roepstorff called and carried with Fran Myers absent (6-0).

EXECUTIVE DIRECTOR ITEMS

Items of interest are contained in the Executive Director Remarks dated August 17, 2021 (copy on file, electronically, in the Communications & Marketing Department at the Lee County Port Authority).

PORT ATTORNEY ITEMS

No items offered by Assistant Port Authority Attorney Mark A. Trank.

AIRPORTS SPECIAL MANAGEMENT COMMITTEE ITEMS

No items were offered by the individual Committee Members.

ADJOURN

The Chair adjourned the meeting at 2:35 p.m.

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|--|---|
| <p>1. REQUESTED MOTION/PURPOSE: Approve the Joint and ASMC meeting date schedule for the calendar year 2022.</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: 2.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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)</p> <p>NAME <u>Brian McGonagle</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:
2022 Joint/ASMC Meeting Calendar Schedule

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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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PORT BOARD AND ASMC MEETING SCHEDULE 2022

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 2022

- ◆ Thursday, January 20 @ 9:30 AM JOINT Meeting – Port Board & ASMC

FEBRUARY 2022

- ◆ Tuesday, February 15 @ 1:30 PM ASMC Meeting

MARCH 2022

- ◆ Thursday, March 3 @ 9:30 AM JOINT Meeting – Port Board & ASMC
- ◆ Tuesday, March 15 @ 1:30 PM ASMC Meeting

APRIL 2022

- ◆ Tuesday, April 19 @ 1:30 PM ASMC Meeting

MAY 2022

- ◆ Thursday, May 5 @ 9:30 AM JOINT Meeting – Port Board & ASMC
- ◆ Tuesday, May 17 @ 1:30 PM ASMC Meeting

JUNE 2022

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

2022 PORT BOARD AND ASMC MEETING SCHEDULE - continued

JULY 2022

- ❖ Tuesday, July 19 @ 1:30 PM ASMC Meeting

AUGUST 2022

- ❖ Tuesday, August 16 @ 1:30 PM ASMC Meeting

SEPTEMBER 2022

- ❖ Thursday, September 8 @ 9:30 AM JOINT Meeting – Port Board & ASMC
- ❖ Tuesday, September 20 @ 1:30 PM ASMC Meeting

OCTOBER 2022

- ❖ Tuesday, October 18 @ 1:30 PM ASMC Meeting

NOVEMBER 2022

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

DECEMBER 2022

- ❖ Tuesday, December 20 @ 1:30 PM ASMC Meeting

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|---|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a budget amendment to the FY 2021-22 Lee County Port Authority Budget to properly reflect the issuance of the Lee County Airport Revenue Bonds Series 2021(B) AMT.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: N/A</p> <p>4. WHAT ACTION ACCOMPLISHES: Allows for a Budget Amendment to various funds in the FY 2021-22 Budget to account for the Series 2021(B) AMT Revenue Bonds.</p> | <p>5. CATEGORY: 3.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p> |
|---|---|

10. BACKGROUND:

The Lee County Airport Revenue Bonds Series 2021(B) AMT are expected to price on October 7, 2021 with a pre-closing on October 20, 2021. In order to reflect this transaction, a new debt service fund needs to be established and additional budgeted dollars in various other funds to reflect the cost of issuance and increased deposits to the reserve fund.

Attachment:
Budget Amendments

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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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RESOLUTION

Amending the Lee County Port Authority Budget for additional revenues and expenditure during Fiscal Year 2021-22.

WHEREAS, in compliance with Florida Statutes 129.06 (e), it is the desire of the Board of Port Commissioners of Lee County, Florida to amend the adopted budget for additional revenues and appropriations for Fiscal Year 2021-22.

41236 - AMT Construction 2022

ESTIMATED REVENUES

UE5000041236.389910.9001	Bond Proceeds	270,000,000
UE5000041236.389100.9000	Interest on Investments	1,380,000

Total Estimated Revenues \$271,380,000

APPROPRIATIONS

GE5429041236.507310	Cost of Issuance	1,650,000
20859541236.506510.60	Professional Services (CA Services)	2,000,000
20859541236.506510.70	Professional Services (CEI Services)	4,000,000
20859541236.506542	Miscellaneous Expenses	1,000,000
20859541236.506540.30	Improvement Construction	93,000,000
GC5890141236.509940	Reserves	151,330,000
GC5810141236.509110	Transfer out to Funds 41234, 41266 & 41271	18,400,000

Total Estimated Appropriations \$271,380,000

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of Lee County, Florida, that the Lee County Port Authority Budget is hereby amended to reflect changes to its revenue and appropriation accounts.

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

Brian Hamman _____

Frank Mann _____

Cecil L Pendergrass _____

Kevin Ruane _____

Raymond Sandelli _____

Done and adopted by the Board of Port Commissioners this _____ day of _____ 2021

ATTEST: CLERK OF THE CIRCUIT COURT	BOARD OF PORT COMMISSIONERS LEE COUNTY, FLORIDA
BY: _____ Deputy Clerk	BY: _____ Chairman
APPROVED AS TO LEGAL FORM:	
BY: _____ Office of the Port Attorney	

RESOLUTION

Amending the Lee County Port Authority Budget for additional revenues and expenditure during Fiscal Year 2021-22.

WHEREAS, in compliance with Florida Statutes 129.06 (e), it is the desire of the Board of Port Commissioners of Lee County, Florida to amend the adopted budget for additional revenues and appropriations for Fiscal Year 2021-22.

41278 - Airport Revenue Bonds (Series 2021B)

ESTIMATED REVENUES

UE5000041278.381000.9412 Interfund Transfer from Funds 41200 & 41266 12,000,000

Total Estimated Revenues \$12,000,000

APPROPRIATIONS

GE5429041278.507110 Principle Payment 2,000,000

GE5919041278.507210 Interest Payment 10,000,000

Total Estimated Appropriations \$12,000,000

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of Lee County, Florida, that the Lee County Port Authority Budget is hereby amended to reflect changes to its revenue and appropriation accounts.

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

Brian Hamman _____
 Frank Mann _____
 Cecil L Pendergrass _____
 Kevin Ruane _____
 Raymond Sandelli _____

Done and adopted by the Board of Port Commissioners this _____ day of _____ 2021

<p>ATTEST: CLERK OF THE CIRCUIT COURT</p> <p>BY: _____ Deputy Clerk</p> <p>APPROVED AS TO LEGAL FORM:</p> <p>BY: _____ Office of the Port Attorney</p>	<p>BOARD OF PORT COMMISSIONERS LEE COUNTY, FLORIDA</p> <p>BY: _____ Chairman</p>
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RESOLUTION

Amending the Lee County Port Authority Budget for additional revenues and expenditure during Fiscal Year 2021-22.

WHEREAS, in compliance with Florida Statutes 129.06 (e), it is the desire of the Board of Port Commissioners of Lee County, Florida to amend the adopted budget for additional revenues and appropriations for Fiscal Year 2021-22.

41266 - Capitalized Interest Series 2021 AMT

ESTIMATED REVENUES

UE5000041266.381000.9412	Interfund Transfer in Fund 41236	13,000,000
UE5000041266.389100.9000	Interest on Investments	100,000

Total Estimated Revenues \$13,100,000

APPROPRIATIONS

GC5810141266.509110	Interfund Transfer to Fund 41278	4,200,000
GC5890141266.509940	Reserves	8,900,000

Total Estimated Appropriations \$13,100,000

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of Lee County, Florida, that the Lee County Port Authority Budget is hereby amended to reflect changes to its revenue and appropriation accounts.

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

Brian Hamman	_____
Frank Mann	_____
Cecil L Pendergrass	_____
Kevin Ruane	_____
Raymond Sandelli	_____

Done and adopted by the Board of Port Commissioners this _____ day of _____, 2021

ATTEST:	BOARD OF PORT COMMISSIONERS
CLERK OF THE CIRCUIT COURT	LEE COUNTY, FLORIDA
BY: _____	BY: _____
Deputy Clerk	Chairman
APPROVED AS TO LEGAL FORM:	
BY: _____	
Office of the Port Attorney	

RESOLUTION

Amending the Lee County Port Authority Budget for additional revenues and expenditure during Fiscal Year 2021-22.

WHEREAS, in compliance with Florida Statutes 129.06 (e), it is the desire of the Board of Port Commissioners of Lee County, Florida to amend the adopted budget for additional revenues and appropriations for Fiscal Year 2021-22.

41200 - RSW Operating Fund

ESTIMATED REVENUES

UE5120041200.381000.9412 Interfund Transfer from Fund 41251 7,800,000

Total Estimated Revenues \$7,800,000

APPROPRIATIONS

GC5810141200.509110 Interfund Transfer to Fund 41278 7,800,000

Total Estimated Appropriations \$7,800,000

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of Lee County, Florida, that the Lee County Port Authority Budget is hereby amended to reflect changes to its revenue and appropriation accounts.

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

Brian Hamman _____
 Frank Mann _____
 Cecil L Pendergrass _____
 Kevin Ruane _____
 Raymond Sandelli _____

Done and adopted by the Board of Port Commissioners this _____ day of _____ 2021

ATTEST:	BOARD OF PORT COMMISSIONERS
CLERK OF THE CIRCUIT COURT	LEE COUNTY, FLORIDA
BY: _____	BY: _____
Deputy Clerk	Chairman
 APPROVED AS TO LEGAL FORM:	
BY: _____	
Office of the Port Attorney	

RESOLUTION

Amending the Lee County Port Authority Budget for additional revenues and expenditure during Fiscal Year 2021-22.

WHEREAS, in compliance with Florida Statutes 129.06 (e), it is the desire of the Board of Port Commissioners of Lee County, Florida to amend the adopted budget for additional revenues and appropriations for Fiscal Year 2021-22.

41251 - PFC Capital Fund

ESTIMATED REVENUES

UE5120041251.381000.9412 Interfund Transfer in from Fund 41250 7,800,000

Total Estimated Revenues

\$7,800,000

APPROPRIATIONS

GC5812241251.509110 Interfund Transfer to Fund 41200 7,800,000

Total Estimated Appropriations

\$7,800,000

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of Lee County, Florida, that the Lee County Port Authority Budget is hereby amended to reflect changes to its revenue and appropriation accounts.

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

Brian Hamman	_____
Frank Mann	_____
Cecil L Pendergrass	_____
Kevin Ruane	_____
Raymond Sandelli	_____

Done and adopted by the Board of Port Commissioners this _____ day of _____ 2021

ATTEST:	BOARD OF PORT COMMISSIONERS
CLERK OF THE CIRCUIT COURT	LEE COUNTY, FLORIDA
BY: _____	BY: _____
Deputy Clerk	Chairman
APPROVED AS TO LEGAL FORM:	
BY: _____	
Office of the Port Attorney	

RESOLUTION

Amending the Lee County Port Authority Budget for additional revenues and expenditure during Fiscal Year 2021-22.

WHEREAS, in compliance with Florida Statutes 129.06 (e), it is the desire of the Board of Port Commissioners of Lee County, Florida to amend the adopted budget for additional revenues and appropriations for Fiscal Year 2021-22.

41271 - Airport Debt Service Reserves

ESTIMATED REVENUES

UE5000041271.381000.9412 Interfund Transfer from Fund 41236 3,300,000

Total Estimated Revenues \$3,300,000

APPROPRIATIONS

GC5890141271.509940 Reserves 3,300,000

Total Estimated Appropriations \$3,300,000

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of Lee County, Florida, that the Lee County Port Authority Budget is hereby amended to reflect changes to its revenue and appropriation accounts.

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

Brian Hamman _____
 Frank Mann _____
 Cecil L Pendergrass _____
 Kevin Ruane _____
 Raymond Sandelli _____

Done and adopted by the Board of Port Commissioners this _____ day of _____ 2021

<p>ATTEST: CLERK OF THE CIRCUIT COURT</p>	<p>BOARD OF PORT COMMISSIONERS LEE COUNTY, FLORIDA</p>
<p>BY: _____ Deputy Clerk</p>	<p>BY: _____ Chairman</p>
<p>APPROVED AS TO LEGAL FORM:</p>	
<p>BY: _____ Office of the Port Attorney</p>	

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

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|---|---|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a two-year extension to the professional service agreement with Ricondo & Associates and the Lee County Port Authority.</p> <p>2. FUNDING SOURCE: Net revenues from the normal operation of the Southwest Florida International Airport</p> <p>3. TERM: November 4, 2021 - November 3, 2023</p> <p>4. WHAT ACTION ACCOMPLISHES: Extends the initial term of the agreement for two additional years.</p> | <p>5. CATEGORY: 4.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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)</p> <p>NAME <u>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p> |
|---|--|

10. BACKGROUND:

In November 2018, the Board approved a professional service agreement with Ricondo & Associates (Ricondo) and the Lee County Port Authority. Recent work provided to the Airport over this time period included:

- Airport rates and fees projections
- Financial Feasibility report for the 2021(A) and the 2021(B) transactions
- Passenger traffic forecasts
- Passenger Facility Charge (PFC) Applications
- Quarterly parking revenue monitoring
- Pay Studies
- Other financial feasibility consulting services as needed

The 2018 agreement was for 3 years, with an optional two year extension. The Airport has negotiated the rates for the additional 2 years and are outlined in the agreement.

Attachment
Professional Service Agreement

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<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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LEE COUNTY PORT AUTHORITY
FIRST EXTENSION AND AMENDMENT TO PROFESSIONAL SERVICES
AGREEMENT FOR FINANCIAL FEASIBILITY CONSULTING SERVICES
LOQ 18-15

THIS FIRST EXTENSION AND AMENDMENT is made and entered this _____day of _____, 2021, between the LEE COUNTY PORT AUTHORITY, a special district and political subdivision of the State of Florida ("Authority"), at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913, and RICONDO & ASSOCIATES, INC., an Illinois for-profit corporation authorized to do business in the State of Florida ("Consultant"), whose business address is 312 Walnut Street, Suite 3310, Cincinnati, OH 45202, Federal Identification Number 36-3663903 (collectively the Authority and Consultant are referred to as the "Parties").

WITNESSETH:

WHEREAS, the Authority and Consultant entered into a Professional Services Agreement ("Agreement") dated November 8, 2018 for financial feasibility consulting services as specified in LOQ 18-15; and

WHEREAS, the initial term of the Agreement is three (3) years, and expires on November 8, 2021; and

WHEREAS, the Authority has the option to renew and extend the initial term for up to two (2) additional years from the expiration date of the initial term; and

WHEREAS, each renewal/extension is subject to successful negotiation by the Parties of a scope of work and compensation schedule for any extended term; and

WHEREAS, to exercise its option to renew and extend the initial term, or any renewed/extended term of this Agreement, the Authority must give the Consultant written notice of its intent to exercise its option to renew and extend at least ninety (90) days before the then current term expires; and

WHEREAS, the Authority provided timely written notice of its intent to exercise its option to renew and extend the Agreement to the Consultant; and

WHEREAS, any renewed/extended term must be agreed to in writing and executed by the Parties with the same formality as this Agreement.

NOW, THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby amend the Agreement as follows:

1. Recitals. The above recitals are true and correct and incorporated into and made a part of this First Amendment by reference.
2. Renewal and Extension of Initial Term. The Parties hereby agree that the Agreement is renewed and extended for an additional two (2) year term.
3. Compensation: Schedule "B" ("Basis of Compensation") is hereby amended to reflect new rates applicable to the renewal term as follows:

	2021 Rates for RSW	2022 Rates for RSW	2023 Rates for RSW
Officer	\$354	\$368	\$383
Director	\$287	\$301	\$316
Managing	\$247	\$259	\$272
Senior	\$208	\$216	\$225
Consultant	\$174	\$181	\$188
Technical	\$146	\$152	\$158

4. Except as amended by this First Extension and Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Extension and Amendment by their proper officials, duly authorized to do so the date above first written.

ATTEST: LINDA DOGGETT
Clerk of the Circuit Court

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair or Vice Chair

Approved as to Form for the Reliance
of Lee County Port Authority Only:

By: _____
Port Authority Attorney's Office

Signed, Sealed and Delivered
in the presence of:

CONSULTANT:
RICONDO & ASSOCIATES, INC.

Witness

Witness

Authorized Signature
Title: Vice President

SEAL

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
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| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve an "On Airport Land Lease" with the Federal Aviation Administration.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: October 1, 2021 to September 30, 2031.</p> <p>4. WHAT ACTION ACCOMPLISHES: Leases a parcel of land at Page Field to the FAA for the maintenance and operation of the Airport Traffic Control Tower (ATCT) facility.</p> | <p>5. CATEGORY: 5.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p> |
|---|---|

10. BACKGROUND:

The Federal Aviation Administration ("FAA") operates and maintains the airport traffic control tower (ATCT) at Page Field, pursuant to an "Air Traffic Control Tower Land Site Memorandum of Agreement" ("MOA") No.: DTFAEN-16-L-00014 between the United States of America Federal Aviation Administration and the Lee County Port Authority dated November 21, 2016, which expires September 30, 2021.

The proposed On-Airport Land Lease (FAA Lease No.: 69435Z-21-L-00104) is intended to replace the existing MOA beginning October 1, 2021, for a ten year term, and covers the same parcel as the expiring lease.

Similar to the MOA it will replace, the proposed new lease does not provide for rent or other monetary payments to be made by the FAA; the consideration for the use of the facility site is the FAA's continued operation and maintenance of the existing ATCT at the Airport.

Attachments:

1. Contract summary
2. Proposed land lease (FAA Lease No.: 69435Z-21-L-00104)

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<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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CONTRACT SUMMARY

Agreement: On-Airport Land Lease between United States of America
(Department of Transportation, Federal Aviation Administration)
and Lee County Port Authority

Tenant: Federal Aviation Administration
Real Estate & Utilities Group
1701 Columbia Avenue AAQ-910
College Park, Georgia 30337-2714

Lease Premises: ATCT site at FMY (see legal description)

Term of Lease: Initial term is October 01, 2021, through September 30, 2031.
Thereafter, the agreement continues month-to-month. Prior to
September 30, 2031, the FAA may terminate the Lease upon
ninety (90) days advance written notice to the Authority.

Rents and Fees: None. Occupancy is granted in consideration of the obligations
assumed by the FAA in its establishment, operation and
maintenance of the facilities upon the premises leased.

Security / Pref. Guaranty: None.

Insurance Requirements: None.

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.

ON AIRPORT LAND LEASE

Between

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

And

LEE COUNTY PORT AUTHORITY

LEASE NO: 69435Z-21-L-00104

FMY/ATCT/LAND

FT. MYERS, FLORIDA 33907-1425

SECTION 6.1: OPENING

6.1.1 Lease Preamble (09/2020)

This Lease is hereby entered into by and between LEE COUNTY AIRPORT AUTHORITY, hereinafter referred to as the Lessor and the United States of America, acting by and through the Federal Aviation Administration, hereinafter referred to as the "Government". The terms and provisions of this Lease, and the conditions herein, bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns

For purposes of this Lease, the terms Contractor, Lessor, and Airport and Contract and Lease are interchangeable with each other.

6.1.2 Succeeding Contract (09/2020) This Real Estate Contract succeeds DTFAEN-16-L-00014 and all other previous agreements between the parties for the property described in this document.

6.1.3 Lease Witnesseth (09/2020)

Witnesseth: The parties hereto, for the consideration hereinafter mentioned covenant and agree as follows:

6.1.4-4 On-Airport Leased Premises (09/2020)

The Lessor hereby leases to the FAA the following described property, hereinafter referred to as the premises:

A tract or parcel of land lying in Section 1, Township 45 South, Range 24 East, Lee County, Florida which tract or parcel is described as follows:

From the northeast corner of said Section 1 run S 00 °39' 40" E along the east line of said Section for 1675.31 feet to an intersection with the northeasterly prolongation of the centerline of Runway 23 ; thence run S 47 °47'38" W along said prolongation and centerline for 2236 .34 feet; thence run N 42 ° 12 '22" W, perpendicular to said runway, for 891 .30 feet to the Point of Beginning of the herein described parcel.

From said Point of Beginning, continue N 42 ° 12'22" W for 200 feet; thence N 47 °47'38" E for 125 feet; thence S 42 °12'22" E for 200 feet; thence S 47 °4 7'38" W for 125 feet to the Point of Beginning.

Bearings hereinabove mentioned are calculated from the Corps of Engineers survey of Page Field.

A. Together with a right-of-way for ingress to and egress from the premises for FAA employees, their agents and assigns; a right-of-way for establishing and maintaining a pole line or pole lines for extending electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over said lands and adjoining lands of the Lessor, and unless herein described otherwise, shall be reasonably determined by the FAA as the most convenient route and as to not interfere with airport operations.

B. And the right of grading, conditioning, installing drainage facilities, seeding the soil of the premises, and the removal of all obstructions from the premises that may constitute a hindrance to the establishment and maintenance of FAA facilities.

C. And the right to make alterations, attach fixtures, erect additions, structures, or signs, in or upon the premises hereby leased. All alterations and additions are and will remain the property of the Government.

SECTION 6.2: TERMS

6.2.5 Term (09/2020)

To have and to hold, for the term commencing on October 1, 2021 and continuing through September 30, 2031 inclusive, provided that adequate appropriations are available from year to year for the consideration herein. This clause is required in all leases or restrictive easements for commencement/expiration.

6.2.6-1 Consideration (No Cost) (09/2020)

The Government shall pay the Lessor no monetary consideration in the form of rental. It is mutually agreed that the rights extended to the Government herein are in consideration of the obligations assumed by the Government in its establishment, operation and maintenance of facilities upon the premises hereby leased.

6.2.7 Termination (09/2020)

The Government may terminate this real estate contract at any time, in whole or in part, if the Real Estate Contracting Officer (RECO) determines that a termination is in the best interest of the Government. The RECO shall terminate this contract by delivering a written notice specifying the effective date of the termination. The termination notice shall be delivered at least 90 days before the effective termination date.

6.2.14 Holdover (09/2020)

If after the expiration of the Lease, the Government shall retain possession of the premises, the Lease

shall continue in full force and effect on a month-to-month basis. Payment shall be made in accordance with the Consideration clause of the Lease, in arrears on a prorated basis, at the rate paid during the Lease term. This period shall continue until the Government shall have signed a new lease with the Lessor, acquired the property in fee, or vacated the premises.

6.2.16 Lessor's Successors (09/2020)

The terms and provisions of this Lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

SECTION 6.3: GENERAL CLAUSES

3.2.5-1 Officials Not To Benefit (09/2020)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

3.3.1-15A1 RE Assignment of Claims (09/2020)

Pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. § 3727, 41 U.S.C. § 6305 the Lessor may assign his rights to be paid under this lease.

3.10.1-22 Contracting Officer's Representative (09/2020) (a) The Contracting Officer may designate other Government personnel (known as the Contracting Officer's Representative) to act as his or her authorized representative for contract administration functions which do not involve changes to the scope, price, schedule, or terms and conditions of the contract. The designation will be in writing, signed by the Contracting Officer, and will set forth the authorities and limitations of the representative(s) under the contract. Such designation will not contain authority to sign contractual documents, order contract changes, modify contract terms, or create any commitment or liability on the part of the Government different from that set forth in the contract.

(b) The Contractor shall immediately contact the Contracting Officer if there is any question regarding the authority of an individual to act on behalf of the Contracting Officer under this contract."

6.3.5 Title To Improvements (09/2020) Title to the improvements constructed for use by the FAA during the life of this Agreement shall be in the name of the FAA.

6.3.6-1 Funding Responsibility for FAA Facilities (09/2020)

The Lessor agrees that any and all Lessor requested relocation(s), replacement(s), or modification(s) of any existing or future FAA navigational aid or communication system(s) necessitated by Lessor improvements or changes will be at the expense of the Lessor. In the event that the Lessor requested changes or improvements interferes with the technical and/or operational characteristics of the FAA's facility, the Lessor will immediately correct the interference issues at the Lessor's expense. Any FAA requested relocation, replacement, or modifications shall be at the FAA's expense. In the event such relocations, replacements, or modifications are necessary due to causes not attributable to either the Lessor or the FAA, funding responsibility shall be determined by mutual agreement between the parties, and memorialized in a Supplemental Lease Agreement.

6.3.18 Non-Restoration (09/2020)

It is hereby agreed between the parties that, upon termination of its occupancy (due to termination or

expiration of the Lease), the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property that is the subject of this Lease, including any holdover period. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned structures and equipment shall become the property of the Lessor.

6.3.25 Quiet Enjoyment (09/2020)

The Lessor warrants that in executing this lease it is acting as authorized agent for Lee County, Florida, which has good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.

6.3.28-2 Interference with FAA Operations (09/2020)

The Airport agrees not to erect or allow to be erected any structure or obstruction of any kind or nature within the Airport's boundaries that the FAA determines may interfere with the proper operation of the facilities installed by the FAA. The FAA and the Airport agree that such action(s) would not be in the best interest of the Airport or the FAA.

6.3.33 Covenant Against Contingent Fees (09/2020) The Lessor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

6.3.34 RE Anti-Kickback (09/2020)

The Anti-Kickback Act of 1986 (41 U.S.C. 51-58), prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

6.3.35 Examination of Records (09/2020) The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative from either shall, until three (3) years after final payment under this contract have access to and the right to examine any of the Lessor's directly pertinent books, documents, paper, or other records involving transactions related to this contract.

6.3.36 Subordination, Non-disturbance and Attornment (09/2020) A. The Government agrees, in consideration of the warranties and conditions set forth in this clause, that this contract is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this contract. Based on a written demand received by the RECO, the Government will review and, if acceptable, execute such instruments as the contractor may reasonably request to evidence further the subordination of this contract to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or

adjoining property owned in whole or in part by the contractor if such easement does not interfere with the full enjoyment of any right granted the Government under this contract.

B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this contract so long as the Government is not in default under this contract. Contractor will include in any future mortgage, deed of trust or other security instrument to which this contract becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Contractor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the RECO promptly upon demand.

C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the contractor under this contract, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the contract had initially been entered into between such purchasers or transferees and the Government; provided, further, that the RECO and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this contract, or other writings, as shall be necessary to document the foregoing relationship.

D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

6.3.37 Notification of Change in Ownership or Control of Land (09/2020)

If the Lessor sells, dies or becomes incapacitated, or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the change in property rights. Concurrent with the written notification, the Lessor or Lessor's heirs, representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.

6.3.39 Integrated Agreement (09/2020)

This Lease, upon execution, contains the entire agreement of the parties, and no prior written or oral agreement, express or implied shall be admissible to contradict the provisions of this Lease.

6.3.45 RE Lease Contract Disputes (09/2020)

All contract disputes arising under or related to this Lease will be resolved through the FAA dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and will be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and will apply only to final agency decisions. A Lessor may seek review of a final Government decision only after its administrative remedies have been exhausted.

All contract disputes will be in writing and will be filed at the following address:

Office of Dispute Resolution for Acquisition, AGC-70

Federal Aviation Administration
800 Independence Avenue, S.W., Room 323
Washington, DC 20591
Telephone: (202) 267-3290

A contract dispute against the FAA will be filed with the ODRA within two (2) years of the accrual of the lease claim involved. A contract dispute is considered to be filed on the date it is received by the ODRA.

The full text of the Contract Disputes clause is incorporated by reference. Upon request the full text will be provided by the RECO.

6.3.48-1 Road Maintenance (09/2020)

The Government shall have the right, but not the obligation, to maintain and/or reconstruct the existing access road. All road maintenance/construction shall be of the most economical type that will provide satisfactory and safe transportation of personnel, equipment and material in the type of weather and climatic conditions normally encountered at this location. The Government shall not maintain or contribute to the maintenance of said access road beyond Government standards or requirements.

SECTION 6.4: FINANCIAL CLAUSES – NOT APPLICABLE

SECTION 6.5: DESIGN & CONSTRUCTION CLAUSES- NOT APPLICABLE

SECTION 6.6: GENERAL BUILDING REQUIREMENTS & SPECIFICATIONS CLAUSES- NOT APPLICABLE

SECTION 6.7: SERVICES, UTILITIES, AND MAINTENANCE CLAUSES- NOT APPLICABLE

SECTION 6.8: ENVIRONMENTAL & OCCUPATIONAL SAFETY & HEALTH CLAUSES-NOT APPLICABLE

SECTION 6.9: SECURITY CLAUSES

6.9.5 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (01/2021)

CLAUSE:

(a) Definitions. As used in this clause--

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening.
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.*, connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (*e.g.*, voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibitions.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4 A 16.e.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4A.16.e. This prohibition applies to an entity that uses covered telecommunications equipment or services, including use not in support of the Government.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor must report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor must report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor must report the following information pursuant to paragraph (d) (1) of this clause:
(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d) (2)(i) of this clause: Any further available information about mitigation actions under taken or recommended. In addition, the Contractor must describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor must insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

6.9.5-1 Covered Telecommunications Equipment or Services- Representations (01/2021)

PROVISION/CLAUSE:

(a) *Definitions.* As used in this provision, “covered telecommunications equipment or services” has the meaning per the clause 6.9.5 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment”.

(b) *Procedures.* The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for covered telecommunications equipment or services.

(c) *Representations.*

- (1) The offeror represents that it _____ does, ___**X**___ does not provide covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.
- (2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it _____ does, ___**X**___ does not use covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services.

6.9.5-2 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (01/2021)

NOTE: The offeror must not complete the representation at paragraph (d)(1) in this provision if the offeror has represented that it does not provide covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument in provision 6.9.5-1 Covered Telecommunications Equipment or Services – Representation (c)(1). Additionally, The offeror must not complete the representation at paragraph (d)(2) in this provision if the offeror has represented that it does not use covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services in provision 6.9.5-1 Covered Telecommunications Equipment or Services – Representation (c)(2).

PROVISION/CLAUSE:

(a) *Definitions.* As used in this provision--

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings

provided in the clause AMS clause 6.9.5, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibitions.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in this prohibition will be construed to—

- (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential part of any system or as critical technology as part of any system. This prohibition applies to any entity that uses covered telecommunications equipment or services, including uses not in support of the Government. Nothing in this prohibition will be construed to-

- (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures: The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from Federal awards for covered telecommunications equipment or services.

(d) Representations.

(1) The Offeror represents that it will, will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(2) After conducting a reasonable inquiry for purposes of this representation, the Offeror represents that it does does not USE covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror must provide the additional disclosure information required at paragraph (e) if the Offeror indicates “does”.

(e) Disclosures. Disclosure for the representation in paragraph (d) (1) of this provision-

If the Offeror has responded “will” in the representation in paragraph (d) (1) of this provision, the Offeror must provide the following information as part of the offer—

(1) For covered equipment

- (i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known;
- (ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
- (iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (1) of this provision;

(2) For covered services-

- (i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable; or
- (ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

Disclosure for representation in paragraph (d) (2) of this provision. If the Offeror has responded “does” to paragraph (d)(2) of this provision, the offeror must provide the following information as part of the offer—

(3) For covered equipment

- (i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known;
- (ii) A description of all covered telecommunications equipment offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable); and
- (iii) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (2) of this provision.

(4) For covered services-

- (i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or
- (ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

SECTION 6.10: CLOSING

6.10.1 Notices (09/2020) All notices/correspondence must be in writing, reference to lease number 69435Z-21-L-00104, and be addressed as follows:

TO THE LESSOR:

LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road Suite 8671
Ft. Myers, Florida 33913-8213

TO THE GOVERNMENT:

Federal Aviation Administration
Real Estate & Utilities Group
1701 Columbia Avenue AAQ-910
College Park, GA 30337-2714

6.10.3 Signature Block (09/2020)

This Lease shall become effective when it is fully executed by all parties. In witness whereof, the parties hereto have signed their names.

LEE COUNTY PORT AUTHORITY

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

By: _____
Rickey Bailey

Date: _____

Real Estate Contracting Officer
Federal Aviation Administration
Eastern Service Area Real Estate Branch
Realty Specialist, AAQ-910
404-305-5726

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

Date: _____

By: _____
Port Authority Attorney

Date: _____

SECTION 11- ATTACHMENTS/EXHIBITS/SPECIAL STIPULATIONS

Number	Title	Date	Number of Pages
1	Public Authorization Certificate		1
2	Certificate of Acknowledgement		1

PUBLIC AUTHORIZATION CERTIFICATE

On this _____ day of _____, 20____, I _____
[insert name]

certify that I am the _____ of the
[insert title]

_____ named in the attached agreement; that
[insert name of State, County, Municipality, or other Public Authority]

_____ who signed said agreement on behalf of the
[insert name of person who signed the agreement]

_____ is
[insert name of State, County, Municipality, or other Public Authority]

_____ of said
[insert title of person who signed the agreement]

_____ ; and that said agreement was duly signed
[insert name of State, County, Municipality, or other Public Authority]

for and on behalf of _____ by authority of
[insert name of State, County, Municipality, or other Public Authority]

its governing body, and is within the scope of its powers.

Signed _____

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 20____, before me, _____,
[insert notary name]

the undersigned Notary Public, personally appeared

[insert name of individual who signed the agreement]

known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge that he/she

executed the same for the purposes therein contained.

Notary Public Signature
Affix Seal Below

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 American Sales and Management Organization, LLC (d/b/a Eulen America).</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: commenced March 1, 2021; month-to-month</p> <p>4. WHAT ACTION ACCOMPLISHES: Amends the Lease to allow American Sales and Management Organization, LLC to lease additional office space within the terminal building.</p>	<p>5. CATEGORY: 6. Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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)</p> <p>NAME <u>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p>
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10. BACKGROUND:

American Sales and Management Organization, LLC ("ASM") provides ground service and skycap services to airlines at Southwest Florida International Airport, as permitted by a 2005 "Ground Service Permit Agreement" with the Authority. ASM also leases approximately 90 square feet of office space located on the second floor of the RSW terminal building, pursuant to a "Lease of Terminal Space at Southwest Florida International Airport" dated May 6, 2021. ASM now desires to lease additional office space.

The proposed First Amendment to Lease of Terminal Space would allow ASM to lease an additional room containing approximately 71 square feet, for a combined total of approximately 161 square feet, effective October 1, 2021. The term of the Lease will remain month-to-month and rent will increase from \$759.68 per month to \$1,463.76 per month. All other terms of the Lease will remain unchanged.

Attachments:

1. Contract Summary
2. Proposed lease amendment

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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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CONTRACT SUMMARY

[Including effects of proposed First Amendment in italics]

Tenant: American Sales and Management Organization, LLC
(d/b/a Eulen America)
7200 NW 19 Street, Suite 206
Miami, FL 33126

Leased Premises: Room #2043G, located behind the ticket counters on the second floor of the RSW terminal building (approximately 90 square feet)
[adds Room #2043A, which is approximately 71 square feet, effective October 1, 2021, for a total of 161 square feet]

Allowed Use(s): Office and storage space associated with tenant's ground service and skycap service operations

Term of Lease: Commenced March 1, 2021, and will continue month-to-month thereafter until terminated by either party upon thirty (30) days advanced written notice

Rents and Fees: Monthly rent of \$759.68; subject to change by the Authority October 1, 2021, and not more frequently than annually thereafter, by giving at least 30 days advance written notice of such change.
[effective October 1, 2021, monthly rent increases to \$1,463.76]

Security/Perf. Guaranty: \$7,800

Insurance Requirements: Lessee must keep in force insurance required by its ground service permit agreement

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 AMENDMENT is made and entered into this ____ day of _____, 2021, 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 **AMERICAN SALES AND MANAGEMENT ORGANIZATION, LLC**, a Florida limited liability company (herein referred to as "Lessee"), with offices at 7200 NW 19 Street, Suite 206, Miami, FL 33126.

Background

The Authority operates Southwest Florida International Airport, located in Lee County, Florida (the "Airport"). Lessee and Authority are parties to a "Lease of Terminal Space at Southwest Florida International Airport" dated May 6, 2021, (the "Lease"). Lessee desires to lease additional space within the Airport's terminal building. The Authority is willing to lease such additional space upon the terms and conditions provided below.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby mutually agree to amend the Lease, effective as of October 1, 2021, as follows:

1. The description of the leased premises in Article 1 of the Lease is amended to read as follows:

Room #2043A and room #2043G containing approximately 161 combined square feet, located behind the ticket counters on the second floor of the main terminal, as shown on Revised Exhibit A attached hereto.

2. The monthly rent set forth in the first sentence of Article 4 ("Rent") of the Agreement is increased from \$759.68 per month to \$1,463.76 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 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.

AMERICAN SALES AND MANAGEMENT ORGANIZATION, LLC
(Lessee)

By: 

Print Name: CRISTIANO TOMINI

As Its: CFO

Date: 9/28/2021

LEE COUNTY PORT AUTHORITY

ATTEST:
LINDA DOGGETT, CLERK

By: _____
Chair or Vice Chair,
Board of Port Commissioners

By: _____
Deputy Clerk

Date: _____

Approved As To Form for the
Reliance of the Lee County
Port Authority only:

By: _____
Port Authority Attorney



Midfield Terminal

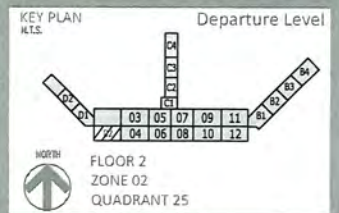
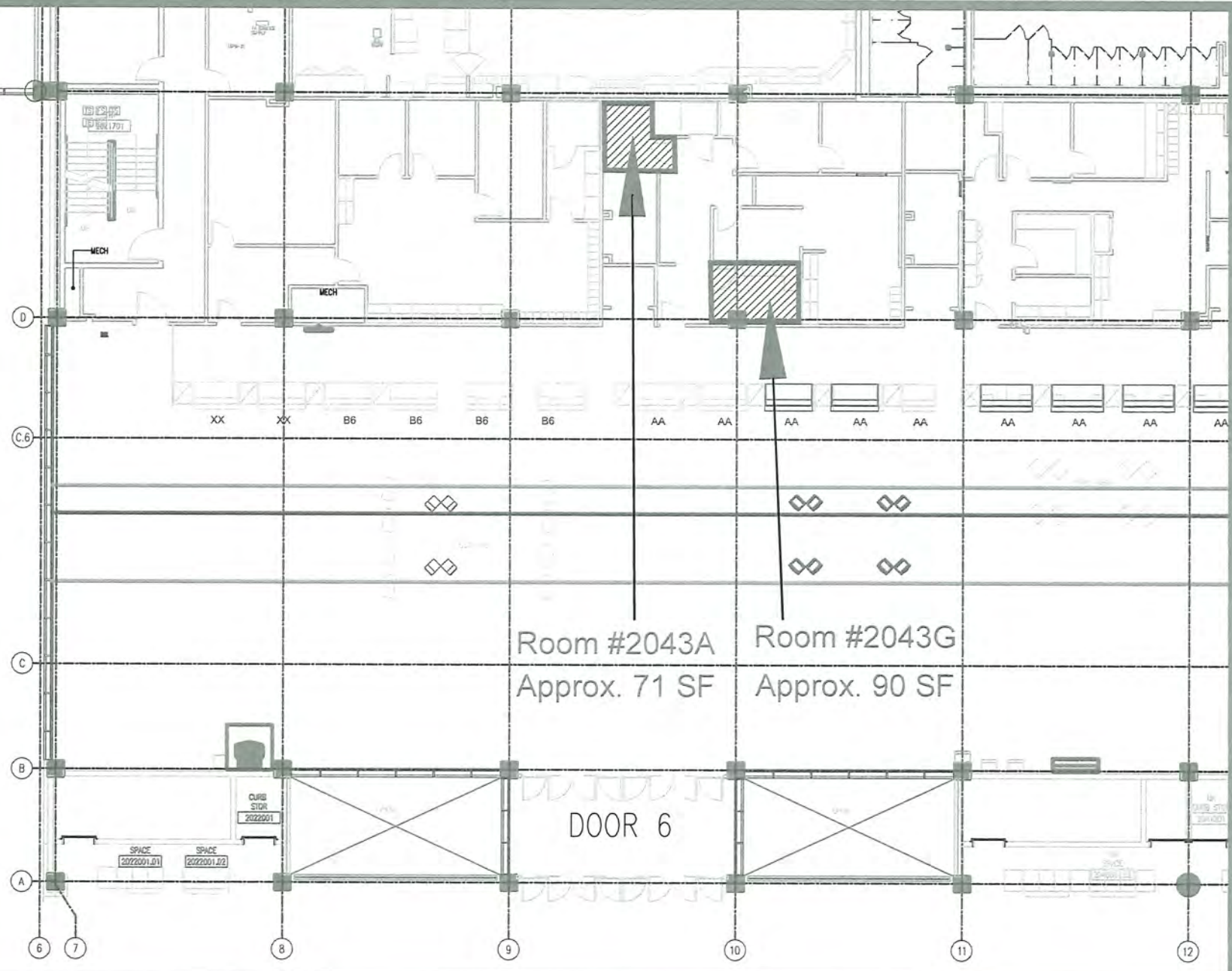
Revised Exhibit A

Second Floor (Departures Level)

American Sales and Management Organization, LLC

ATO Space # 2043A # 2043G

Date: 28 - July - 2021



BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

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| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a “Nonparticipating Airline Airport Use Permit” agreement with Air Transat A.T. Inc.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: from December 1, 2021, until terminated.</p> <p>4. WHAT ACTION ACCOMPLISHES: Specifies terms and conditions for the airline’s use of facilities and equipment at RSW.</p> | <p>5. CATEGORY: 7.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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)</p> <p>NAME <u>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p> |
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10. BACKGROUND:

Air Transat A.T. Inc. will begin service between Southwest Florida International Airport, and Montréal-Trudeau International Airport (YUL) in December, 2021. As requested, Air Transat A.T. Inc. has signed the latest version of the Authority’s standard “Nonparticipating Airline Airport Use Permit” agreement.

The proposed permit agreement allows the carrier to use certain ramp space, equipment, and terminal facilities, in return for landing fees, terminal use fees, equipment use charges, and aircraft parking fees. The proposed agreement may be terminated by either party upon thirty (30) days’ advance written notice.

- Attachments:
1. Contract Summary
 2. Proposed agreement

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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> |
|---|---|

Contract Summary

Type of Agreement:	Nonparticipating Airline Airport Use Permit
Carrier:	Air Transat A.T. Inc. 5959 Boul De La Cote Vertu Ouest, Montreal, QC H4S 2E6, Canada
Premises:	Allows carrier to use certain ramp space, equipment, and terminal facilities at RSW
Allowed Use(s):	Airline passenger and cargo service
Term:	Begins December 1, 2021; may be terminated by either party at any time upon 30 days' advance written notice
Fees:	Landing fees, terminal use fees, equipment use charges, aircraft parking fees, etc.
Security/Perf. Guaranty:	\$25,000.00; adjustable at Authority's discretion after first year
Insurance Requirements:	for aircraft in excess of 20,000 lbs. maximum gross landing weight, \$300 million combined single limit per occurrence comprehensive airline hull and liability insurance (\$25 million for personal injury to non-passengers) for aircraft greater than 15,000 and not more than 20,000 lbs. maximum gross landing weight, \$200 million combined single limit per occurrence comprehensive airline hull and liability insurance (\$10 million for personal injury to non-passengers) for aircraft with 15,000 lbs. or less maximum gross landing weight, \$5 million combined single limit per occurrence comprehensive airline hull and liability insurance (\$5 million for personal injury to non-passengers)

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.*

NONPARTICIPATING AIRLINE AIRPORT USE PERMIT

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

This Nonparticipating Airline Airport Use Permit ("Permit"), is an agreement made this ____ day of _____, 2021, 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 ("Authority"), and **AIR TRANSAT A.T. INC.**, a corporation registered and formed under the laws of Canada, maintaining offices at 5959 BOUL DE LA COTE VERTU OUEST, MONTREAL, QC H4S 2E6, Canada ("Carrier").

Background

Southwest Florida International Airport, in Lee County, Florida (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 01-014, Lee County has vested the Lee County Port Authority with the power to operate the Airport, and to lease premises and facilities on the Airport and to grant related rights and privileges. In entering this agreement, the Lee County Port Authority is acting as agent for Lee County.

Carrier desires to operate passenger airline service at the Airport and to use certain of the Authority's facilities in conjunction with its operations, such as gate parking positions, jet bridges, gate areas, passenger holdroom areas, and baggage claim areas.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as follows:

ARTICLE 1

GRANT OF PRIVILEGE TO USE AIRPORT TERMINAL AND FACILITIES

The Authority hereby grants Carrier permission to use the aircraft ramp space, equipment, and terminal operating facilities that may be assigned to Carrier by the Authority pursuant to the procedures set forth in Exhibit A hereto, subject to the terms and conditions set

forth herein (including Exhibit A of this Permit, as may be amended from time to time by the Authority), for the operation of aircraft owned or leased by the Carrier, and related passenger services, at the Airport. Any facilities that become assigned to Carrier by the Authority are referred to below as the "Authority Facilities" or "Facilities."

Carrier shall not provide ground services, or any other services, to any other airline, unless Carrier first secures a Ground Service Permit Agreement or other written agreement from the Authority allowing such work.

ARTICLE 2

TERM

This Permit shall be effective beginning on December 1, 2021, or the date Carrier first operates at the Airport, whichever occurs first, and shall continue until terminated, at any time, by either party giving at least thirty (30) days prior written notice to the other.

ARTICLE 3

FEES AND CHARGES

Section 3.1 General. In consideration of the privilege of using the Airport and its Facilities, Carrier agrees to pay fees and charges to the Authority as follows:

- (1) Landing Fees, based on the standard landing weight of each aircraft (as set forth in Exhibit B hereto, or as otherwise established by the Authority), at the rate then in effect, as established by the Authority effective each October 1, or as may be changed by the Authority at any time upon thirty (30) days written notice; plus
- (2) Terminal Use Fees, in accordance with the rates set forth on Exhibit B attached hereto, as may be changed by the Authority at any time upon thirty (30) days written notice;
- (3) Equipment Use Charges, in accordance with the rates set forth on Exhibit C attached hereto, as may be changed by the Authority at any time upon thirty (30) days written notice;
- (4) Aircraft Parking Fees, at the rates set forth in Exhibit C; plus

- (5) Metered Charges, to the extent any utilities utilized by Carrier are separately metered; plus
- (6) Miscellaneous Charges, meaning:
 - (a) such reasonable and nondiscriminatory fees and charges that may be established by Authority for any other services or facilities that are requested by Carrier and provided by the Authority; and
 - (b) Carrier's pro rata share of the Authority's costs in providing any additional services or facilities the Authority may be required by any governmental entity having jurisdiction over the Airport (except the Authority acting in its proprietary role) to provide to Carrier.

The Authority may change any of the fees and charges set forth in this Section 3.1, including but not limited to the rates on Exhibits B and C, at any time upon thirty (30) days advance written notice to Carrier.

Section 3.2 Information to be Supplied by Carrier. Not later than the tenth (10th) calendar day following the end of each calendar month, Carrier shall file with the Authority written reports in the form attached hereto as Exhibit D, or on such other forms as may be provided by the Authority from time-to-time, for activity conducted by Carrier at the Airport during said month. The reports shall include such statistical data on Carrier's activities at the Airport as the Authority reasonably may request.

Section 3.3 Payment. Based on such reports, or the Authority's landing records, the Authority will issue monthly invoices to Carrier and Carrier will pay such invoices within 30 days from the date of each such invoice. In the event Carrier fails to provide any required written report within the time specified herein, or if the data set forth on said written report submitted to the Authority appears to be inaccurate, the Authority may, based on previous reports or other information available to the Authority, estimate Carrier's activity for the previous month and issue invoices based thereon. Carrier shall be liable to the Authority for any deficiencies in payments

based upon such estimates. If such estimates result in an overpayment by Carrier, the Authority shall remit, or, at Authority's option, credit such overpayment to Carrier. Carrier shall make all payments to the Authority, without any set off or deduction, to: Lee County Port Authority, Finance Department, 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913. The acceptance of payment by the Authority from Carrier shall not preclude the Authority from verifying the accuracy of Carrier's reports on which Carrier's rentals, fees, and charges are based as provided in this Article and shall not be deemed a waiver of interest due, if any.

Section 3.4 Interest. Amounts due from Carrier to Authority under this Permit and not paid by the invoice due date shall accrue interest at the rate of fifteen percent (15%) per year.

Section 3.5 Auditing. The Authority or its duly authorized representative(s) may examine Carrier's operational books and records relating to determining amounts payable under this agreement (for example, the numbers and types of aircraft Carrier operated at the airport during the period in question), during all reasonable business hours, in Carrier's offices or such other place as mutually agreed to between Carrier and the Authority. Upon the Authority's written request for examination of such books, and records Carrier shall produce such items in Lee County, Florida, within fifteen (15) business days or pay all reasonable expenses, including but not limited to transportation, food, and lodging for the Authority's Internal Auditor or his representative(s) to audit said books and records outside Lee County.

The cost of said audit, with the exception of the aforementioned transportation, food, and lodging expenses, shall be borne by the Authority; provided however, that the full cost of said audit shall be borne by Carrier if either or both of the following conditions exist:

- (1) The audit reveals an underpayment of more than five percent (5%) of the fees and charges which are based on monthly activity, due hereunder, as determined by said audit;
- (2) Carrier has failed to maintain true and complete books, records, and supportive source documents in accordance with Section 3.5 herein above.

Any underpayment of amounts due the Authority disclosed as a result of said audit, including interest computed from the original due date of each such amount due shall be paid to the Authority within thirty (30) consecutive calendar days of the date of the Authority's invoicing therefore. Such payment by Carrier shall not abrogate Carrier's right to contest the validity of said underpayments. Any valid overpayments made by Carrier shall be promptly remitted, or, at the Authority's option, credited to Carrier.

ARTICLE 4

PERMIT IS NONTRANSFERABLE

This permit agreement is totally nontransferable and Carrier cannot assign this permit agreement or any rights granted to Carrier hereunder.

ARTICLE 5

SIGNAGE

Carrier may not install any sign without prior written approval by the Authority, which may be withheld for any reason, or may be conditioned on Carrier:

- (i) submitting to the Authority, for the Authority's approval, complete plans and specifications for the proposed work, utilizing the procedures set out in the "Leasehold Development Standards";
- (ii) obtaining and pay for all permits and approvals required, and pay any applicable impact fees or other development fees;
- (iii) providing the Authority with proof of insurance of the types and in the amounts set forth below;
- (iv) executing, delivering to the Authority, and recording 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
- (v) obtaining from the Authority written approval of the design plans and specifications and a written Notice to Proceed. The Authority reserves the right to require Carrier to resubmit designs and plans until acceptable to the Authority. Any requirement of such resubmittal will state the reason(s) the plans were unacceptable and, where applicable, the changes requested by the Authority.

ARTICLE 6

MAINTENANCE

Section 6.1 Maintenance. Carrier shall promptly repair any and all damages to the Facilities caused by its employees, agents, guests, or invitees, ordinary wear and tear and causes beyond the reasonable control of Carrier only excepted.

Section 6.2 Spills. Carrier, or responsible contractor of Carrier, shall immediately notify the Authority in the event of fuel or chemical spills where there is a possible impact on the environment, and Carrier shall be responsible and liable for any damage or expense to the Authority caused by such fuel or chemical spill.

ARTICLE 7

PERFORMANCE GUARANTEE

Carrier will provide the Authority, prior to commencement of operations hereunder, a security deposit in the amount of \$25,000.00, in the form of cash or an irrevocable letter of credit. If said security is provided in the form of an irrevocable letter of credit, the letter shall be issued and drawn on an American bank or trust company, be acceptable to the Authority in form and content, permit partial drawings, and automatically renew each year until the termination or expiration of this agreement. If such letter of credit is not renewed, Carrier shall deliver a replacement letter of credit to the Authority at least thirty (30) days before expiration of the current letter of credit; failure to do so will constitute a breach and entitle the Authority to present the letter of credit for payment.

In lieu of cash or a letter of credit, the Authority may accept, at its sole option, a performance bond which is a binding guaranty, to secure the faithful performance by Carrier of Carrier's obligations under this agreement, in form and substance acceptable to the Authority, in the amount stated above, duly issued by a surety company which is acceptable to the Authority,

pursuant to which the surety company agrees to pay the Authority any amount up to the sum stated above, within twenty-four (24) hours after delivery to the said surety of the Authority's signed statement that such funds are payable to the Authority because of Carrier's default under the terms and conditions of this agreement. Such guaranty shall be in full force and effect during the term of this agreement, provided that if initially issued for a lesser term, Carrier shall deliver a renewal certificate or replacement guaranty (similar in all respects to the initial guaranty) to the Authority at least thirty (30) days before expiration of the current guaranty; failure to do so will constitute a breach and entitle the Authority to collect under the existing guaranty.

After the first year of the term of this Permit, the Authority may increase or decrease the amount of the security required based on an assessment of loss exposure to the Authority and the Carrier's performance of its obligations under this Permit. If Carrier defaults on any duty under this agreement, the Authority may apply the amounts posted, or recovered from said surety, to damages sustained.

In lieu of providing the performance guarantee required by this Article 7, Carrier may either:

- (a) prepay fees in advance of each actual operation at the Airport by making payment to the Authority's Finance Department, in advance, of such amount as said Finance Department may estimate will at least equal the amount of fees to be incurred by Carrier (the Authority will reconcile such amounts, based on actual operations, and any amount overpaid by Carrier shall be duly returned); or
- (b) be designated as an "Affiliate" pursuant to, and by an airline which is a party to, an "Airline-Airport Use and Lease Agreement" with the Authority, provided such airline agrees to serve as financial guarantor for all rentals, fees, and charges incurred by Carrier at the Airport.

ARTICLE 8

RELEASE, HOLD HARMLESS, INDEMNIFICATION

Carrier 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, to any person or property in connection with the use

of the Airport by Carrier, its contractors, employees, and agents, and for any and all fines or penalties imposed by any governmental agency (including, but not limited to, the Federal Aviation Administration ("FAA") and Transportation Security Administration ("TSA") as a result of the failure of Carrier or its contractors, agents or employees to abide by or comply with any statute, ordinance, rule, regulation, or other requirement (including but not limited to breaches of the Airport's security) except to the extent that such injury, loss, damage, fine, or penalty is caused by the willful misconduct or negligence of the Authority or Lee County, its directors, officers, employees, agents, or contractors.

ARTICLE 9

INSURANCE

Carrier shall, at all times during the duration of this Permit, commencing with the first day thereof, and for thirty (30) days after the termination of this Permit, have and maintain in full force and effect the following insurance coverages:

- (1) Workers' Compensation insurance in such amounts as may be required by the Florida "Workers' Compensation Law" law, and Employers' Liability insurance with coverage limits of at least \$500,000. A waiver of subrogation, in favor of Authority, is required for this coverage.
- (2) Comprehensive Airline Hull and Liability insurance as follows:

- (a) For aircraft in excess of 20,000 pounds Maximum Gross Landing Weight (MGLW):

Comprehensive Airline Hull and Liability insurance with limits of not less than \$300,000,000 (\$25,000,000 for personal injury to non-passengers) combined single limit per occurrence, including, but not limited to, aircraft liability and passenger legal liability. Such insurance shall include an endorsement for contractual liability.

- (b) For aircraft in excess of 15,000 pounds but not more than 20,000 pounds Maximum Gross Landing Weight (MGLW):

Comprehensive Airline Hull and Liability insurance with limits of not less

than \$200,000,000 (\$10,000,000 for personal injury to non-passengers) combined single limit per occurrence, including, but not limited to, aircraft liability and passenger legal liability. Such insurance shall include an endorsement for contractual liability.

(c) For aircraft 15,000 pounds or less Maximum Gross Landing Weight (MGLW):

Comprehensive Airline Hull and Liability insurance with limits of not less than \$5,000,000 (including \$5,000,000 for personal injury to non-passengers) combined single limit per occurrence, including, but not limited to, aircraft liability and passenger legal liability. Such insurance shall include an endorsement for contractual liability.

All Comprehensive Airline Liability required by this part (2) shall provide coverage for events which occur during the policy period, and not on a claims made basis, and shall include endorsements:

1. acknowledging that the indemnification and hold-harmless provisions of this Permit are insured under Carrier's blanket contractual liability coverage;
2. naming the Lee County Port Authority and Lee County, Florida as additional insureds;
3. indicating that the insurance is primary and non-contributory with respect to the matters within such coverage, irrespective of any insurance carried by the Authority, and includes a waiver of subrogation in favor of the Authority;
4. providing that, as respects the interest of the Authority, this insurance shall not be invalidated by any breach of warranty by Carrier; and
5. providing a severability of interest/cross liability endorsement.

The Authority and Carrier agree to have all fire and extended coverage and material damage insurance carried with respect to the Airport, the property or any portion of either endorsed with a clause which waives all rights of subrogation that the insurer of one party might have against the other party.

Prior to the commencement of this Permit, certificates of insurance shall be delivered to the Authority evidencing compliance with the insurance terms of this Permit. Carrier will also provide

Authority a copy of any endorsement to said policies, or a copy of said policies, or both, upon request by Authority. All of the above insurance shall be written through a company or companies satisfactory to the Authority, and the certificates of insurance shall be of a type that unconditionally obligates the insurer to notify the Authority in writing in advance of the effective date in the event of a material change in or cancellation of such insurance.

If Carrier fails to provide or to maintain during the term of this Permit the insurance required by this section, the Authority may terminate this Permit without notice to Carrier. Certificates of insurance and other related notices shall be sent to:

Lee County Port Authority
Risk Manager
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

The insurance provisions contained herein shall remain in effect and shall survive the termination of this Permit with respect to any occurrence or claim arising during the term of or in connection with this Permit. The Authority reserves the right to amend the insurance provisions of this Permit from time to time, with thirty (30) days prior written notice to Carrier.

ARTICLE 10

TAXES, LICENSES, AND PERMITS

Carrier shall pay any applicable sales, use, or other taxes that may be imposed on the Authority for services furnished to Carrier under this Permit. Carrier will also be responsible for the payment of any use or property taxes levied on tangible personal property owned by Carrier, but Carrier shall not have responsibility for any use or property taxes levied on tangible personal property owned by the Authority. All licenses, fees, and permits imposed upon the Authority in order to perform hereunder shall be the responsibility of Carrier.

ARTICLE 11

AVAILABILITY OF FACILITIES

The Authority will not be liable or responsible, nor be obligated to perform hereunder, nor be deemed to be in default hereunder, for any failure to provide or delay in providing any Facilities. In the event of any conflict between the needs of the Authority, and any other carriers for whom the Authority provides Facilities covered by this Permit, the needs of the Authority shall be given priority; then the needs of Carrier and such other carriers shall be afforded priority according to the Authority's procedures as outlined in Exhibit A, as may be amended by the Authority.

A Facility Assignment (as defined in Exhibit A) shall expire at the time specified therein, or upon the termination of this Permit, whichever occurs first. The Authority reserves the right to utilize any Facilities assigned to Carrier and not used by Carrier during such assigned period(s) or to reassign such Facilities to another Carrier.

ARTICLE 12

STORM WATER COMPLIANCE

Section 12.1 Laws. Carrier acknowledges that the Airport is subject to federal storm water regulations (40 CFR Part 122) and state storm water regulations (Chapter 373, Part IV, and Chapter 403, Florida Statutes, and Rule 62-621.100 *et seq.*, Fla. Admin. Code).

Section 12.2 Carrier's compliance with Authority's permit from FDEP. Authority has obtained a storm water discharge permit for the Airport (Multi-Sector Generic Permit #FLR05A496) from the Florida Department of Environmental Protection ("FDEP"). Carrier will observe and comply with, and agrees not to cause any violation of, said permit or the Authority's Storm Water Pollution Prevention Plan ("SWPPP"), Best Management Practices ("BMPs"), or any

Multi-Sector Generic Permit that has been, or in the future is, issued for the Airport by the FDEP.

Section 12.3 Permittee to obtain own FDEP permit if permit is necessary. The Authority's permit does not cover Carrier or Carrier's performance of any "industrial activities" as defined in 14 CFR Part 122. If Carrier desires to perform any vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or deicing/anti-icing operations, then Carrier must first obtain its own permit from the FDEP.

Section 12.4 Best Management Practices. Authority and Carrier acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Carrier acknowledges that the Authority acting reasonably may require Carrier to undertake to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by the Carrier, by implementing and maintaining "Best Management Practices." Upon request, Authority shall promptly provide a copy of the then current "Best Management Practices" that apply to the Carrier's operations. Authority will allow Carrier a reasonable opportunity to comment on proposed changes to "Best Management Practices" to ensure that those changes are consistent with applicable laws and minimize any potential negative impact to the Carrier's operations under this Permit.

For purposes of this Article, the following definitions apply:

"Storm water" - Storm water runoff and surface water runoff and drainage.

"Significant materials" - Includes, but is not limited to -- raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products, raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have a potential to be released with storm water discharges. (See 40 CFR 122.26(b)(12).)

"Best Management Practices" (BMP) - Practices employed to prevent or reduce source water pollution.

ARTICLE 13

CONFLICTS

This Permit is subject to the terms and conditions of all existing Airport contracts to the extent that any of the terms of this Permit would otherwise conflict with the obligations of the Authority under such contracts, and the Authority will not be obligated to provide any facilities hereunder if, in the Authority's opinion, Authority demonstrates to Carrier that the provision of such services or facilities would likely legally conflict with any terms or conditions of any such existing agreements.

ARTICLE 14

CONDITION OF FACILITIES

The Facilities provided hereunder are provided as-is, where-is, and with all faults, and the Authority makes no warranties, guarantees, or representations of any kind, either express or implied, arising by law or otherwise, including, but not limited to, any warranty, guarantee, or representation with respect to the merchantability or fitness for intended use or condition of such Facilities. Carrier hereby waives, and the Authority expressly disclaims, all warranties, guarantees, and all representations, express or implied, arising by law or otherwise, including, but not limited to, any implied warranty arising from the course of performance, course of dealing, or usage of trade, and any implied warranty of fitness for a particular purpose. In no event shall either party's liability of any kind under this permit include any consequential damages.

ARTICLE 15

NATURE OF CARRIER'S INTEREST

This Permit is strictly a license to use the Facilities that may be assigned by the Authority to a carrier via a Facility Assignment Letter (pursuant to 1.8 of Exhibit A hereto). This Permit does not confer upon the Authority any control over, or obligation of bailment with respect to, any aircraft or other equipment owned or operated by Carrier, and does not subject the Authority to any of the liabilities of an owner, user, bailee, lessor, lessee, or operator of any aircraft or other equipment owned or operated by Carrier.

ARTICLE 16

COMPLIANCE WITH LAWS

Carrier (including its officers, agents, employees, and contractors) shall comply at all times with all applicable laws, and all other applicable statutes, ordinances, orders, directives, rules, and regulations of the governmental authorities having jurisdiction.

ARTICLE 17

FAA CLAUSES

Section 17.1 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 agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Carrier 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 17.2 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 the Authority for Airport purposes, or the expenditure of federal funds for the improvements or development of the Airport.

Section 17.3 Nonexclusivity. Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are nonexclusive and the Authority reserves the right to grant similar privileges to another Carrier or other Carriers on other parts of the Airport.

ARTICLE 18

CIVIL RIGHTS AND TITLE VI

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

18.2 Compliance with Nondiscrimination Requirements. During the performance of this contract, Airline, 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.

18.3 *Transfer of Real Property Acquired or Improved Under the Airport Improvement*

Program.

- A. Airline, 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 Airline 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.

18.4 *Construction/Use/Access to Real Property Acquired Under the Activity, Facility or*

Program.

- A. Airline, 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 Airline 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.

18.5 *Title VI List of Pertinent Nondiscrimination Acts and Authorities.* During the

performance of this contract, the Airline, 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 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

ARTICLE 19

GENERAL PROVISIONS

Section 19.1 Entire agreement. This contract sets out the entire agreement between the parties for the described premises. There are no implied covenants or warranties. 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.

Section 19.2 Notices. Notice to the Authority will be sufficient if sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight delivery service (e.g. Federal Express, Airborne Express, DHL), to: Executive Director, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913. Notice to Carrier will be sufficient if sent in the same manner, addressed to Carrier at the Carrier's address set forth on page 1 above. The parties may designate in writing other addresses for notice. Notice shall be deemed given when received.

Section 19.3 Headings. The headings 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 19.4 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 19.5 Time. Time is of the essence in the performance of this agreement.

Section 19.6 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 19.7 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 Carrier's use of the Airport.

Section 19.8 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 19.9 Nonwaiver of breaches. 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 19.10 Administration of Permit. Whenever in this agreement Carrier is required or permitted to obtain the approval of, consult with, give notice to, receive notice from, or otherwise deal with the Authority, then, unless specifically provided to the contrary above, Carrier shall deal with the Authority's authorized representative; and unless and until the Authority gives Carrier written notice to the contrary, the Authority's authorized representative shall be the Authority's Executive Director.


Section 19.11 Airport development. The Authority reserves the right to further develop, change, or improve the airport and its routes and landing areas as the Authority sees fit, without

Carrier's interference or hindrance and regardless of Carrier's views and desires.

Section 19.12 Carrier's noninterference with aircraft. Carrier will not use 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, the Authority reserves the right to abate or eliminate the interference at the expense of Carrier.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this agreement on the date first above written.

AIR TRANSAT A.T. INC.
(Carrier)

By: 
Charles-Antoine Paradis
Title: Senior Director, Strategic Procurement
Date: September 8, 2021

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

EXHIBIT A

LEE COUNTY PORT AUTHORITY GATES AND FACILITIES PROCEDURES

The Lee County Port Authority is the operator of the Airport and the Facilities located within the Airport Terminal Complex.

In order to provide Carrier and the traveling public with prompt, safe, efficient, and competitive service at the Airport and Authority Facilities, the Authority herein establishes the following procedures:

SECTION I. DEFINITIONS

The following words, terms, and phrases, wherever used herein and in the Permit, shall have the following meaning.

1.1 Airport - The Southwest Florida International Airport as it now exists or may hereafter be improved or expanded.

1.2 Airline - Any company providing passenger air transportation service at the Airport.

1.3 Authority - The Lee County Port Authority.

1.4 Facilities - Those terminal facilities and equipment and related common use areas assigned to Carrier or added from time to time by the Authority, for Carrier's nonexclusive use, which may include an assigned aircraft parking position and jetbridge (collectively referred to as a "Gate"), ticket counters, operational offices, baggage make-up areas, baggage claim belts, and hold rooms and related equipment.

1.5 Scheduled Service - Airline operations that are performed at the Airport at least five times per week on a year-round basis.

1.6 International Service - Any flight that originates or terminates outside the continental United States.

1.7 Domestic Service - Any flight both originating and terminating in the continental United States.

1.8 Facility Assignment - The Authority's response to a request by an airline for Facilities, assigning the requested Facilities or alternate Facilities pursuant to the terms of this Permit and setting forth any other conditions of use.

1.9 Gate Slot Assignment - The privilege of having access to a Gate at a given time and for a given duration, that meets the operating requirements of the aircraft, as approved by the Authority and subject to the terms and conditions set forth herein.

1.10 Peak Gate Slot Assignment Periods - Those slot assignment periods when anticipated Gate Slot Assignment requests are expected to exceed the requested capacity of the Gate Facilities.

1.11 Inauguration Date - The date upon which Carrier commences operations at the Southwest Florida International Airport under this Permit.

1.12 Commuter Airline - Any airline operating at the airport solely with aircraft having: (i) a certificated maximum gross landed weight equal to or less than 55,000 pounds, and (ii) fifty (50) seats or less.

SECTION II. ASSIGNMENT OF USE OF AUTHORITY FACILITIES TO CARRIER

2.1 The Authority will make Gate Slot Assignments and other Facility Assignments in accordance with the terms and conditions of this Permit.

2.2 No Airline has any right to the exclusive use of any Facility.

2.3 Gate Overtime Parking charges and additional Ticket Counter charges may be assessed if the Carrier's occupancy time exceeds the time set forth below and impacts the operation of another Airline. Aircraft operating off-schedule or outside the assigned Facility Use Period shall make every attempt to minimize occupancy times to avoid impacting other previously scheduled operations. The Authority will take all reasonable measures to assist Carrier in avoiding such impacts. The maximum permissible occupancy times for assigned ticket counter positions and Gates, are as follows:

	<u>TICKET COUNTER</u>		<u>GATE</u>
	<u>POSITIONS</u>	<u>TIME</u>	<u>TIME</u>
<u>DOMESTIC</u>			
Narrow Body Aircraft	2	3.0 hrs	1 hour 30 min
Wide Body Aircraft	4	3.0 hrs	1 hour 30 min
<u>INTERNATIONAL</u>			
Narrow Body Aircraft	2	3.5 hrs	1 hour 45 min
Wide Body Aircraft	3	4.0 hrs	1 hour 45 min
Wide Body B 747 Aircraft	3	4.5 hrs	1 hour 45 min

The Authority may extend or reduce these times; provided, however, extensions that would interfere with Facility Assignments to other Airlines will not be given.

2.4 Any Airline desiring to use a Gate Facility for overnight parking must coordinate such parking with the Authority. Notwithstanding the Authority's approval of such overnight parking, if the Authority gives Airline one (1) hour notice that said Gate is required to stage an aircraft arrival, then the Airline shall remove its aircraft from the Gate as directed by the Authority. The fees for failure to remove aircraft when requested or agreed upon are indicated on the attached Exhibit C.

2.5 All Gate Slot Assignments will be done in accordance with the conditions, procedures, and priorities set forth herein. All Scheduled Airlines shall submit written requests for their desired Gate Slot Assignments at least thirty (30) days prior to publication of scheduled service additions and changes in the O.A.G. All other Airlines shall submit their Gate Slot Assignment requests following the procedures set forth for scheduled Airlines. Any Airline not following such procedures will be provided a Gate Slot only if available, regardless of its priority hereunder. If an Airline that has an assigned Gate Slot is maintaining the same schedules for the new Gate Slot Assignment period, a new request submittal will not be necessary, and it will be assumed by the Authority that the Airline is requesting the same Gate Assignment Slot(s).

All Airlines shall submit written copies of their proposed upcoming Gate Slot Assignment requests to the Authority at the earliest possible date. The date of submission of such information will be a consideration in assignment of Facilities, along with the Gate prioritization stated herein. Any Gate Slot Assignment request not approved within forty-five (45) days of submission to the Authority will be deemed denied, and will require resubmission to be considered. Once Gate times have been assigned, an Airline will be charged for unused Gate Slot Assignments which result in lost revenue to the Authority, unless Carrier's flight was scheduled for the Gate Slot Assignment but was unavoidably delayed or cancelled due to bad weather conditions. Such charges shall be based on the amount of revenue lost from Landing Fees, Terminal Use Fees, and Facility Use Fees which would have been derived from other Airlines that requested the same Gate Slot Assignment period.

In determining Peak Gate Slot Assignment conflicts, the Authority shall attempt to resolve conflicting demands through negotiations with the involved Airlines to arrive at a reasonable and objective solution consistent with the Permit terms and the priorities set forth herein.

2.6 In determining Gate Slot Assignments, the following priority will be used to determine the order of allocation by class of air service:

- A. First, all International Service, as defined in Section 1.6 of this Exhibit A. International flights shall be further prioritized as follows: first (A) any international flight operated at least one time weekly on a calendar year or on a seasonal basis; then (B) all other international service. International service within categories (A) and (B) shall be further prioritized as follows: (1) long haul flights, meaning all international flights originating outside of the North American Continent (including the Caribbean basin); (2) short haul flights, meaning all international flights originating from the North American continent

(including the Caribbean basin).

- B. Second, all Domestic Service, as defined in Section 1.7 of this Exhibit A. Domestic flights are further prioritized as follows: first (A) scheduled service, as defined in Section 1.5 of this Exhibit A; then (B) Other Domestic Service - All other domestic service requiring a Gate. Notwithstanding the preceding sentence, in the event of any conflict between jet aircraft and non-jet aircraft, jet aircraft will normally be given priority over non-jet aircraft.

2.6.1 Slot Assignment Prior Use Priority - If two (2) or more Airlines compete for the same Gate Slot Assignment Period, the Airline that has been using the Gate Slot Assignment for the longer period of time in the equivalent season shall have priority. There are two (2) six-month seasons in the Fiscal Year. The first season begins October 1.

2.7 There shall be no less than fifteen (15) minutes separation between Gate Slot Assignments and other Facility Use Assignments if the Facility assignment is not on a continuing 24-hour basis.

2.8 Airlines may be granted the option of contracting with other Airlines for the use of Terminal Facilities under lease from the Authority, or from the F.B.O. Facility, if the Authority gives prior written approval. Any such approval will be for a period not exceeding thirty (30) days at one time, and all fees and charges payable for such Facilities use shall not exceed directly or indirectly the charges that would be payable to the Authority for similar Facilities, unless authorized by the Authority.

2.9 The Authority reserves the right to deny a priority use of Facilities for reasons which include: 1) enhancement of competitive international and domestic air service to the air service region the Airport serves; 2) abuse of Facilities; 3) reckless operation of equipment; 4) falsification of requests for Gate Slot Assignments or other Facility requests in number and use duration; 5) failure to timely pay use charges; or 6) continued abuse of the rights and obligations under this Permit after three warnings except for failure to pay Permit use charges.

SECTION III. MODIFICATION, ALTERATION, OR ADDITION TO PROCEDURES

3.1 This Exhibit A will remain in effect until and unless modified, altered, added to, or deleted by the Authority upon thirty (30) days written notice to Carrier.

EXHIBIT B
NON-PARTICIPATING AIRPORT FACILITY CHARGE (TERMINAL USE FEES)
(EFFECTIVE FOR 10/01/2021)

AIRCRAFT TYPE	STANDARD LANDING WEIGHT (LBS.)	AVG. # SEATS	ARRIVAL	DEPARTURE
A310-300	273,375	240	\$528.00	\$528.00
A319	134,481	134	\$294.8	\$294.8
A320-100	135,000	164	\$360.80	\$360.80
A320-200	143,000	150	\$330.00	\$330.00
A321-100	165,346	185	\$407.00	\$407.00
A330-200	396,830	293	\$644.60	\$644.60
A330-300	382,498	335	\$737.00	\$737.00
A340-200	405,650	263	\$578.60	\$578.60
A340-300	410,056	298	\$655.60	\$655.60
A350-900	451,945	315	\$693.00	\$693.00
B717-200	110,000	106	\$233.20	\$233.20
B727-200	161,000	134	\$294.80	\$294.80
B737-200	107,000	136	\$299.20	\$299.20
B737-300	115,800	128	\$281.60	\$281.60
B737-400	121,000	146	\$321.20	\$321.20
B737-500	110,000	108	\$237.60	\$237.60
B737-600	120,500	119	\$261.80	\$261.80
B737-700	128,000	138	\$303.60	\$303.60
B737-800	144,000	172	\$378.40	\$378.40
B737-900	144,000	183	\$402.60	\$402.60

EXHIBIT B (EFFECTIVE FOR 10/01/2021)
(Continued)

AIRCRAFT TYPE	STANDARD LANDING WEIGHT (LBS.)	AVG. # SEATS	ARRIVAL	DEPARTURE
B737 MAX 8	150,800	210	\$462.00	\$462.00
B747-100/200	585,000	442	\$972.40	\$972.40
B747-300	564,000	496	\$1,091.20	\$1,091.20
B747-400	630,000	420	\$924.00	\$924.00
B757-200	198,500	186	\$409.20	\$409.20
B757-300	224,000	243	\$534.60	\$534.60
B767-200 and 200ER	272,000	216	\$475.20	\$475.20
B767-300	300,000	269	\$591.80	\$591.80
B767-300ER	320,000	261	\$574.20	\$574.20
B767-400ER	350,000	245	\$539.00	\$539.00
B777-200	455,000	305	\$671.00	\$671.00
B787-800	365,000	250	\$550.00	\$550.00
C100	110,000	110	\$242.00	\$242.00
C300	121,500	135	\$297.00	\$297.00
DC10-30/40	403,000	262	\$576.40	\$576.40
MD81	128,000	172	\$378.40	\$378.40
MD87	128,000	139	\$305.8	\$305.8
MD82/MD88	130,000	172	\$378.40	\$378.40
MD83	139,500	172	\$378.40	\$378.40
MD-11 and 11ER	430,000	298	\$655.60	\$655.60
MD-90-30	142,000	158	\$347.60	\$347.60

EXHIBIT B (EFFECTIVE FOR 10/01/2021)
(Continued)

AIRCRAFT TYPE	STANDARD LANDING WEIGHT (LBS.)	AVG. # SEATS	ARRIVAL	DEPARTURE
EMB-145	41,226	50	\$110.00	\$110.00
EMB-170	72,310	78	\$171.60	\$171.60
EMB-175	74,957	80	\$176.00	\$176.00
EMB-190	94,799	98	\$215.60	\$215.60
EMB-195	99,208	108	\$237.60	\$237.60
CRJ200	47,000	50	\$110.00	\$110.00
CRJ700ER	67,000	70	\$154.00	\$154.00
CRJ900ER	73,500	90	\$198.00	\$198.00

Terminal Use Fees for aircraft not listed above will be \$2.20 per seat* for arrivals plus \$2.20 per seat* for departures, except that Terminal Use Fees for aircraft weighing less than 55,000 lbs. certificated maximum gross landed weight shall be assessed as follows:

<u>Number of Seats*</u>	<u>Arrival</u>	<u>Departure</u>
0-10	\$22.00	\$22.00
11-20	\$44.00	\$44.00
21-30	\$66.00	\$66.00
31-40	\$88.00	\$88.00
41-50	\$110.00	\$110.00

* The number of seats to be used in the calculation will be determined by the Authority for the standard, or average, configuration for that aircraft, by reference to the manufacturer's specifications or the Authority's reference manuals.

Note: If Carrier makes more than 31 flights to and from the Airport in a calendar month, Terminal Use Fees applicable to each additional flight after the first 31 flights in that calendar month will be seventy-five percent (75%) of the rates set forth above. Terminal Use Fees applicable to direct intercontinental flights (international flights directly between RSW and a point outside of the North American Continent, including the Caribbean basin) which also enplane or deplane passengers at another United States airport as part of continuing service to or from that intercontinental flight will be fifty percent (50%) of the rates set forth above. A "flight" means one arrival combined with one corresponding departure.

* Please note that while the Airlines are required to self report monthly flight activity, the Lee County Port Authority utilizes the Automated Landing Fee system to calculate actual landed weight and number of flights.

EXHIBIT C – Non Participating

Effective October 1, 2021

EQUIPMENT USE CHARGES

EQUIPMENT USE CHARGE PER TURN (includes Jet Bridge & 400 Hz power)....	\$165.00
PORTABLE GROUND POWER USAGE (GPU), charge per hour for usage of Port Authority's GPU equipment when parked remotely.....	\$100.00
AIR STAIR FEE, daily rate (per aircraft, per day, for the period from 12:01 AM to 11.59PM, or any portion thereof).....	\$50.00
COMMON USE TICKET COUNTER SPACE, PER TURN, PER 2-POSITION TICKET COUNTER	\$115.00
COMMON USE TICKET COUNTER SPACE, PER TURN, PER 1-POSITION TICKET COUNTER	\$58.00
Only applicable to aircraft 12,500 lbs. or less	
COMMON USE TERMINAL EQUIPMENT ("CUTE"), PER TURN, PER SEAT (based on aircraft type's average number of seats per Exhibit B).....	\$0.75*
*maximum of \$150.00 per turn	
COMMON USE CURBSIDE CHECK-IN SPACE, PER TURN, PER 2-POSITION TICKET COUNTER.....	\$25.00
COMMON USE BAGGAGE MAKE-UP SPACE WITH BAG BELT, PER TURN, PER SEAT.....	\$0.75**
**maximum of \$150.00 per turn	

AIRCRAFT PARKING FEES

RON PARKING FEES:

Overnight is defined as the period from 8:00 PM to 6:00 AM: \$100.00

RON PARKING FEES parked on North Ramp (former terminal site):

Daily rate (per aircraft, per day, for the period from 12:01 AM to 11:59 PM, or any portion thereof), up to 90 per month: \$150.00

AIRCRAFT APRON PARKING RATES

REGULAR APRON USE CHARGE, PER TURN	\$66.00
COMMUTER APRON USE CHARGE, PER TURN:	
Aircraft 12,500 lbs. or less	\$5.00
Aircraft exceeding 12,500 lbs.	\$15.00

AIRPORT FACILITY CHARGE

These charges are for all Non-Participating airlines for the use of the Gate and Baggage Claim areas (includes holdroom). These fees are based on average number of seats per aircraft type.

For the first 31 flights per month, \$4.40 per seat, per turn

For all flights over 31 flights per month, \$3.30 per seat, per turn

EMPLOYEE PARKING LOT

The charge for usage of Employee Parking lot.

Monthly fee \$15, per RSW badged employee

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|---|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a "Ground Lease for Construction and Operation of an Air Freight Building at Southwest Florida International Airport" with AFCO Cargo RSW, LLC.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: 25 years, plus two (2) options to extend for 5 years each</p> <p>4. WHAT ACTION ACCOMPLISHES: Leases a parcel, south of the runway, to a developer to construct a new air freight building which will replace the airport's old air freight building north of the runway.</p> | <p>5. CATEGORY: 8.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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)</p> <p>NAME <u>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p> |
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10. BACKGROUND:

The original RSW terminal complex located north of the runway included an airline air freight building of approximately 13,500 square feet. That building was designed in 1982 and is believed to have been in use since the original terminal's opening in 1983. The building is used by passenger airlines (for belly freight) and companies that service them.

The building is nearing the end of its useful life and will require significant investment to extend that life. Also, with RSW's terminal now south of the runway, the building's location on the north side of the runway is not very practical for RSW's passenger airlines. Accordingly, the Authority selected a site south of the runway, near the rental car fuel farm and future consolidated receiving facility, for a potential replacement air freight building.

On September 17, 2020, the Authority advertised Request for Proposals (RFP) 21-03TLB, for "Lease of Land for Development and Operation of an Air Freight Building at Southwest Florida International Airport." The advertisement appeared in statewide and national aviation trade publications, the Fort Myers News-Press, and on the Port Authority's website. A non-mandatory pre-proposal meeting was held remotely on September 28, 2020, to discuss the requirements and objectives of the RFP and to answer questions. Addendums to the RFP were released on October 16, November 10, and November 20, 2020. On December 3, 2020, two proposals were received from the following companies (listed alphabetically): Aeroterm Acquisitions, LLC (herein "Aeroterm") and AFCO Aviation Facilities Company Management, LLC (herein "AFCO").

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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> |
|---|---|

Background (continued)

A publicly noticed meeting of the Authority's Staff Evaluation Committee was held remotely on December 18, 2020, to review the proposals to determine which proposers were responsible and submitted responsive proposals, and to recommend an order of preference of the responsive, responsible proposers to the Airports Special Management Committee (ASMC) for their consideration. During this meeting, the Staff Evaluation Committee deemed the proposal by AeroTerm to be nonresponsive to the RFP, making AFCO the sole responsive, responsible proposer. At their February 16, 2021, meeting, the ASMC concurred with staff in selecting AFCO Aviation Facilities Company Management, LLC, as the sole responsive, responsible proposer. The Board concurred with that selection on March 4, 2021, and authorized staff to begin contract negotiations with AFCO. Those negotiations have resulted in this proposed agreement.

The proposed agreement is a ground lease to AFCO Cargo RSW, LLC ("AFCO RSW"), recently formed by AFCO for this project. The lease provides for AFCO RSW's development and operation of an air freight building. The main points of the ground lease are as follows:

- (1) AFCO RSW will lease a parcel of land containing approximately 2.59 acres located within the area bounded by a future Remote Loading Dock site on the northeast, the existing service road on the northwest, and the service road alignment on the south.
- (2) The initial term of the lease will be 25 years after the Date of Beneficial Occupancy (DBO), and AFCO RSW will have 2 options to extend the term by 5 years each, for a total potential term of 35 years after DBO.
- (3) AFCO RSW will expend at least \$2,025,000.00 (the "minimum capital investment") on the "minimum required improvements," consisting of an enclosed air freight building containing at least 15,000 square feet of floor area, with at least five (5) sub-leasable units, and associated landside parking, airside parking, receiving, and storage area.
- (4) "Construction Period Rent" in the amount of \$1,175.21, per month will commence on January 1, 2023, and will continue until the day before the DBO.
- (5) Upon the DBO, which will be no later than January 1, 2024, rent will increase to \$4,700.85 per month, subject to periodic CPI adjustments.

The following page contains a summary of the main terms of the proposed agreement. Following that is the proposed agreement.

Attachments

1. Rendering of proposed building
2. Contract Summary
3. Proposed Agreement



CONTRACT SUMMARY

Agreement:	Ground Lease for Construction and Operation of an Air Freight Building at Southwest Florida International Airport
Tenant:	AFCO Cargo RSW, LLC 45025 Aviation Drive, Suite 100 Dulles, VA 20166
Leased Premises:	approximately 2.59 acres located within the area bounded by a future Remote Loading Dock site on the northeast, the existing service road on the northwest, and the service road alignment on the south
Allowed Use(s):	receipt, storage, and shipping of air cargo; parking, storage, maintenance, and repair of airline ground service equipment; provision of aircraft-related or air cargo-related services to airlines; office space ancillary to any allowed use(s)
Term of Lease:	Initial term will begin December 1, 2021, and continue until 25 years after the "Date of Beneficial Occupancy" (which will be no later than January 1, 2024); tenant has two (2) options to extend by five (5) years each
Rent:	construction period rent of \$1,175.21 per month from December 1, 2022, through DBO; ground rent, beginning on the DBO, of \$4,700.85 per month (subject to CPI adjustments)
Security/Perf. Guaranty:	\$25,000 cash or letter of credit to be provided by December 10, 2021
Insurance:	Commercial General Liability \$10,000,000 Auto \$5,000,000 Property insurance at full replacement value Workers' Compensation as required by state law Employer's Liability \$1,000,000 Pollution Legal Liability \$2,000,000 per occurrence, and \$4,000,000 annual aggregate

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.*

GROUND LEASE
FOR CONSTRUCTION AND OPERATION OF AN
AIR FREIGHT BUILDING
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, 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") as lessor, and **AFCO CARGO RSW, LLC**, a Delaware limited liability company with principal offices at 45025 Aviation Drive, Suite 100, Dulles, VA 20166-7524 (herein referred to as "Lessee").

Background

Southwest Florida International Airport, in Lee County, Florida (the "Airport") is owned by Lee County, a political subdivision of the State of Florida. Pursuant to Chapter 63-1541, Laws of Florida, Section 332.08(1) Florida Statutes, and Lee County Ordinance 90-02, as amended, 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.

Lessee submitted a proposal in response to the Authority's "Request For Proposals RFP #21-03TLB for Lease of Land for Development and Operation of an Air Freight Building at Southwest Florida International Airport" (the "RFP"). Pursuant to the RFP, the Authority has selected Lessee's proposal and the parties have negotiated this lease agreement, whereby the Authority leases to Lessee, and Lessee leases from Authority, a certain parcel of

land at the Airport for Lessee's development, construction, maintenance and operation of an air freight building.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree 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 the following described parcel of real property within the boundaries of Southwest Florida International Airport, in the County of Lee, State of Florida:

A parcel of land containing approximately 2.59 acres, depicted generally as the "Leased Premises" on the drawing attached hereto as "Exhibit No. 01";

together with the nonexclusive right to use, in common with the Authority and others, any public roads, walkways, and other public areas on the Airport for access to and from the 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 Survey of boundaries. The parties recognize that Exhibit No. 01 shows only an approximate depiction of the boundaries of the Leased Premises. Accordingly, within one (1)

year after the Effective Date of this lease (as defined in Section 2.1 below), and prior to commencing any construction, the Lessee shall obtain, at its own cost, and provide to the Authority, a precise boundary survey and metes and bounds description of said premises, prepared by a professional surveyor and mapper licensed in the state of Florida in accordance with said Exhibit No. 01 and certified for the benefit of the Authority and Lessee. Authority shall have thirty (30) days from the date it receives the survey and metes and bounds description to determine whether they accurately reflect the boundaries of said parcel 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 description with the Clerk of Courts, Minutes Department, the survey and metes and bounds description shall be deemed incorporated by reference into this lease, and will be the controlling interpretation of the boundaries of said leased parcel.

ARTICLE 2

TERM

Section 2.1 Initial term. The initial term of this lease will commence on December 1, 2021 (the "Effective Date"), and will continue until the day before the date that is twenty-five (25) years after the "Date of Beneficial Occupancy", as defined in Section 4.3 below.

Section 2.2 First option to extend. Lessee shall have

the option to extend the term of this lease for an additional five (5) year period immediately following the initial term (provided that the lease has not been terminated and that Lessee is not then in default), by giving the Authority written notice, in the manner set forth below, no earlier than one year and no later than two months prior to the expiration of the initial term, TIME BEING OF THE ESSENCE, of Lessee's intent to exercise this option.

Section 2.3 Second option to extend. If Lessee validly exercises the first option to extend, as set forth in Section 2.2 above, Lessee will have one additional option to extend the term of this lease for a second five (5) year period (provided that the lease has not been terminated and that Lessee is not then in default), by giving the Authority written notice, in the manner set forth below, no earlier than one year and no later than two months prior to the expiration of the lease term as extended by exercise of the first option, TIME BEING OF THE ESSENCE, of Lessee's intent to exercise this second option.

Section 2.4 Lessee's exercise of options to extend. 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 2.5 Lessee's Inspection Period and option to terminate therein. Notwithstanding anything herein that may appear to the contrary, Lessee shall have a period of eighteen

(18) months, starting on the Effective Date of this lease (the "Inspection Period") within which to undertake any inspections of the premises it deems necessary, and during which time Lessee shall have the option, at its sole discretion, to terminate this lease by providing advance written notice to Authority, in which case Lessee's security deposit or performance guarantee will be returned to Lessee, and neither party shall have any further liability to the other.

Section 2.6 Demolition of Old Air Freight Building. Upon Lessee's substantial completion of the Minimum Required Improvements specified in Article 5, and receipt of a certificate of occupancy for the air freight building included therein, Lessee will provide Authority written notice thereof. Within thirty (30) days of receipt of said written notice from Lessee, Authority will provide written notice to each of its tenants in its existing air freight building at 11850 Regional Lane (herein the "Old Air Freight Building") that Authority is terminating their lease of space within said building, effective on a date to be specified by the Authority but no later than seventy-five (75) days after Authority's receipt of Lessee's notice to Authority. Authority will not agree to allow any such tenants to hold over under their existing leases beyond the effective termination date specified in such notices to the tenants.

Upon move-out of each existing tenant from the Old Air

Freight Building, Authority will not re-lease the vacated space to any other tenant. Upon move-out of the last tenant from the Old Air Freight Building, Authority will, in good faith, seek to have the Old Air Freight Building demolished as promptly as is practicable, either via a contractor selected and contracted with pursuant to the Authority's normal and legally required competitive procurement process, or via leasing the entire site of the Old Air Freight Building to a tenant which is, pursuant to such lease, prohibited from occupying or subleasing, and required to demolish, said building as promptly as is practicable.

Section 2.7 Authority's option to terminate.

Notwithstanding any other provisions of this lease that may appear to the contrary, if Lessee fails to obtain all necessary permits for construction and actually commence construction of the "Minimum Required Improvements" (described in Section 5.2 below) by November 30, 2023, then the Authority may, at its sole option, terminate this lease upon sixty (60) days written notice to Lessee, provided however that if Lessee obtains all necessary permits for construction of, and actually commences construction of, the Minimum Required Improvements prior to the effective date of said termination, such notice of termination will be deemed withdrawn. The Authority may extend said time period in writing, but will be under no obligation to do so. If Authority's right to terminate is exercised as herein provided, this lease shall

thereafter be null and void, and any money or security deposited hereunder shall be returned to Lessee (provided Lessee is then current on any rent obligations) and neither party shall have any further liability to the other.

ARTICLE 3

USE OF LEASED PREMISES

Section 3.1 Use of premises. Lessee shall have the right and obligation to use the Leased Premises to develop and operate an air freight facility which will be used solely for the following uses (the "Permitted Uses"), and subleases for such Permitted Uses will not require the consent of Authority:

- (1) receipt, storage and shipping of air cargo (including office space ancillary thereto);
- (2) parking, storage, maintenance, and repair of airline ground service equipment (including office space ancillary thereto);
- (3) provision of aircraft-related or air cargo-related services to airlines (including office space ancillary thereto) such as:
 - (a) air cargo handling;
 - (b) freight forwarding;
 - (c) customs brokerage;
 - (d) airline ground services; and
 - (e) training associated with the above

In the event Lessee is unable, for a period exceeding six (6) months, to sublease any particular portion of its building to a subtenant for a Permitted Use stated above, at a rental rate of

at least \$25.00 per square foot (including all costs associated with occupancy), then Lessee may propose to Authority, for Authority's consent pursuant to Article 7 below, a sublease for another intended use, which the Authority may approve or disapprove in its sole discretion.

Notwithstanding items (1) through (3) above, nothing herein shall be construed to allow Lessee, or its subcontractors or subtenants, to provide services to other entities, either within the leased premises or on parts of the Airport outside the leased premises, without being permitted in writing by the Authority, in advance, to provide such services on the Airport, which permission may be subject to the Authority's then-applicable terms, conditions, and fees for the privilege of providing such services on the Airport (including but not limited to satisfaction of the Authority's then-current "Minimum Standards for Aeronautical Activities for Southwest Florida International Airport," to the extent applicable).

Lessee shall not use or permit the use of the leased premises, or any part thereof, for any purpose other than those specifically allowed above, and shall not provide, or allow to be provided, any other service at or from the leased premises, except upon prior written consent of the Authority.

Notwithstanding anything above which may appear to the contrary, prohibited uses of the leased premises include, but are

not limited to:

- (1) maintenance, repair, or overhaul of aircraft;
- (2) storage of cars, boats, travel trailers, recreational vehicles, or other items not related to aviation;
- (3) sale or provision of fuel or fueling services to the public or any third parties;
- (4) the presence, placement, or use, of "Mobile Minis" or any other trailers or modular units, whether for office, storage, or otherwise, after the "Date of Beneficial Occupancy" defined below;
- (5) rental of parking spaces to the public, or any other kind of commercial parking operations;
- (6) rentals or sales of any motor vehicles; and
- (7) provision of airfield access to any subtenant not having a bona fide business purpose for same.

Section 3.2 Non-interference with Airport. Lessee 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, constitute an Airport hazard, or be contrary to the FAA-approved Airport Layout Plan (ALP). Lessee shall make no unlawful, improper, or offensive use of the premises.

ARTICLE 4

RENT AND CHARGES

Section 4.1 Construction period rent prior to Date of Beneficial Occupancy. Lessee agrees to pay the Authority, as "Construction Period Rent," monthly, the sum of \$1,175.21, together with applicable sales tax, on or before the first day of

each calendar month, for the period beginning on December 1, 2022, and continuing until the last day before the "Date of Beneficial Occupancy" (defined below). The Construction Period Rent for any partial month will be prorated.

Section 4.2 Ground Rent. Lessee agrees to pay the Authority, monthly, together with applicable sales tax, on or before the first day of each calendar month, commencing on the "Date of Beneficial Occupancy," and for and during the remainder of the term of this lease, "Ground Rent," in the amount of \$4,700.85 per month (subject to CPI adjustments pursuant to Section 4.4 below). The Ground Rent for any partial calendar month will be prorated.

Section 4.3 Definition of Date of Beneficial Occupancy. The "Date of Beneficial Occupancy" as used in this lease means the first day of the calendar month immediately following the earlier of:

- (1) issuance of a temporary or permanent certificate of occupancy for any building constructed on the premises (other than a temporary construction office); or
- (2) the date Lessee commences using the leased premises (or any part) for any aspect of its business (other than a temporary construction office, and construction of the improvements); or
- (3) January 1, 2024.

For the purposes of this agreement, the Date of Beneficial Occupancy will be set and conclusively determined by the date set out in Authority's written notice to Lessee, unless Lessee can

show that none of the above prerequisites to the Date of Beneficial Occupancy have occurred. Lessee will use due diligence and make good faith efforts to obtain permits, complete its construction, cause the Date of Beneficial Occupancy to occur, and open the facility for subleasing as provided herein, as soon as practicable.

Section 4.4 CPI adjustments. Beginning January 1, 2024, and every three (3) years thereafter, while this lease is in force, the Ground Rent will be adjusted to reflect proportionate increases and decreases in CPI, but will never be less than the initial Ground Rent specified in Section 4.2 above. The adjusted ground rent will be the product of the initial ground rent 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 October 2020. The term "comparison index" means the CPI in effect for the second calendar month before the adjustment date.

The term "CPI" means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, (1982-84 = 100), published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to use 1982-1984 = 100 as a base, or if the CPI is altered, modified, converted, or revised in any way, the CPI will be adjusted to the figure that would have resulted had the change not occurred. If the CPI ceases to

be published, any substitute or successor equivalent index published by any agency of the U.S. government will be used.

Section 4.5 Payments. All payments shall be payable, together with any applicable Florida sales tax, on or before the first day of each calendar month for which the payment is due. Payments shall be paid, 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.

ARTICLE 5

CONSTRUCTION OF FACILITY; MINIMUM REQUIRED IMPROVEMENTS

Section 5.1 Premises is leased "as is". Lessee agrees to accept the leased premises strictly in "as is" condition. No representation has been made to Lessee by Authority concerning the condition of the premises or its suitability for Lessee's purposes or Lessee's ability to obtain permits for its development.

Section 5.2 Minimum required improvements. Lessee will, at Lessee's own cost and expense, design, obtain all required permits and approvals, complete all site work, and construct, on the leased premises, the following "Minimum Required Improvements" which shall consist of the following improvements and facilities:

- (1) an enclosed air freight building containing at least

15,000 square feet of floor area, with at least five (5) subleasable units; and

- (2) all associated improvements required by the RFP, the Lee County Land Development Code or any governmental entity, including, but not necessarily limited to, automobile parking, lighting, utility lines, fire protection, storm water detention, retention, and control systems, security fencing, berms, landscaping, and roads and driveways for ingress, egress, and circulation.

Authority will cooperate and assist with Lessee's procurement of required permits and approvals, provided that the Authority will incur no expenses aside for its staff time.

Section 5.3 Minimum capital investment; Cost of improvements. Lessee will bear the sole cost and expense of all improvements to the premises, or to serve the premises, including, but not limited to, site investigation, location of any existing utilities, design, permitting, materials, access roads, driveways, extension of utilities, site work, security fence work (as noted below), construction, insurance, and maintenance. Lessee is required to expend a minimum of \$2,025,000.00 (herein the "Minimum Capital Investment") for the initial development and construction of the Minimum Required Improvements set forth above. Only the following "Allowable Items" will be counted toward satisfying the Minimum Capital Investment:

- (1) the actual costs of labor and materials for the construction of the Minimum Required Improvements which are contracted for and paid for by the Lessee;
- (2) the actual costs of furniture, fixtures, and equipment

purchased for and installed and used on the leased premises; and

- (3) actual design, engineering, and permitting costs (including expenditures on third-party consultants such as consultants, attorneys, local agents, expeditors, etc.), not to exceed 15% of the total of the costs of (1) and (2) above.

Within ninety (90) days of the date the air freight building is opened for business, Lessee will confirm its compliance with this Section by providing Authority with an itemized list of expenditures on Allowable Items actually paid for, along with copies of paid invoices or similar documents acceptable to the Authority evidencing the amount Lessee has spent on the Allowable Items, and a signed statement by Lessee's chief financial officer certifying that to the best of their knowledge and belief the schedule is true and correct and all amounts listed were actually incurred and paid by Lessee. The amount of such expenditures which are timely and satisfactorily evidenced to the Authority, as set forth above, shall be the "Actual Capital Investment" for the purposes of this agreement.

If the amount of the Actual Capital Investment is less than the Minimum Required Capital Investment, Lessee will pay the Authority the difference within thirty (30) days of invoice or written notice by the Authority.

All work, whether interior or exterior, ordinary, extraordinary, or structural, must be performed in a good and workmanlike manner, in full compliance with plans and

specifications approved by the Authority, and in compliance with the Lee County Land Development Code and the Lee County Port Authority "Leasehold Development Standards for Southwest Florida International Airport and Page Field Airport" adopted by the Authority on March 12, 2001, as may be amended or replaced from time to time in a nonretroactive and nondiscriminatory manner ("Leasehold Development Standards"), except as may be expressly waived by the Authority, and all other applicable governmental rules or regulations.

Lessee will, as needed, and subject to the Authority's approval as to locations and specifications, remove existing fencing and install new chain link fencing, gates, and security card readers, so as to enclose the leased premises within the Airport's Airside Operations Area (herein "AOA"), while maintaining the integrity of the AOA perimeter security fencing at all times. All fencing, paving, and roadway work shall be done in accordance with Lee County D.O.T., Florida D.O.T., or Federal Aviation Administration specifications, as may be applicable.

Section 5.4 *Design approvals; construction bonds; insurance.* Prior to commencing any construction work on the leased premises or elsewhere on the Airport, (including but not necessarily limited to mobilization, earth moving, initial construction, improvements, alterations and repairs) Lessee

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 "Leasehold Development Standards";
- (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 set in Article 13 below;
- (4) itself, or cause its contractor to, 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;
- (5) require its general contractor to obtain the insurance set forth in Section 13.2 below, and furnish evidence satisfactory to the Authority that the contractor or contractors have such insurance;
- (6) coordinate with the Authority to submit an application to the FAA for "airspace analysis" and approval; and
- (7) obtain from Authority written approval (not to be unreasonably withheld or delayed) of the design plans and specifications and a written Notice to Proceed. The Authority reserves the right to require Lessee to resubmit designs and plans until acceptable to the Authority. Any requirement for such resubmittal shall detail the reason(s) the plans were unacceptable and, where applicable, the changes requested by Authority. If the Authority does not respond to Lessee's plans within 30 days after receipt by Authority, they will be deemed approved.

Section 5.5 As-built Drawings. Within ninety (90) days of the completion of any construction work by Lessee, Lessee will supply the Authority with an external drive (without executable files) containing the digital as-built CAD drawings ("As-built"

is defined as the revised set of drawings that reflect all changes made in the specifications and working drawings during the construction process, and show the exact dimensions, geometry, and location of all elements of the work completed under the contract) and one (1) set of reproducible 24" x 36" as-built drawings in PDF format. All submitted drawings must include and reference the latest Autodesk CAD version and latest revision of any/all applicable Lee County Port Authority CAD Drawing Standards and OI-8200 Facility Numbering Standards, should have a defined projected coordinate system in NAD 83 State Plane Florida West 0902, and be signed and sealed by an architect or engineer licensed in Florida. If the Lessee fails to provide said as-built drawings within thirty (30) days after notice that same are overdue, the Authority may hire a registered architect or engineer to provide same and shall recover the cost of said work, plus a twenty percent (20%) overhead administrative fee, from the Lessee.

Section 5.6 Environmental mitigation to be off-airport.

Any environmental mitigation required of the Lessee by governmental authorities for the construction of Lessee's improvements shall be located off-airport and at Lessee's own expense. However, Lessee may locate stormwater detention or retention facilities on the leased premises, subject to the other provisions of this lease, and provided they are designed in conformance with FAA Advisory Circular 150/5200-33, "Hazardous

Wildlife Attractants on or Near Airports" as may be amended from time to time. It is further agreed that Lessee may use any existing stormwater detention and retention facilities adjacent to the leased premises and may discharge directly or from its own systems into those existing systems.

Section 5.7 Maintenance and repairs of the premises.

Lessee will maintain the leased premises and any structures and other improvements thereon (whether preexisting this lease or constructed by Lessee) in a good state of repair, and in a clean, orderly, safe, and serviceable condition at all times. Lessee will provide at its own expense all such maintenance, custodial, trash removal, landscaping, pest control, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the leased premises and improvements thereon.

Section 5.8 Ownership of improvements. Title to all Improvements when made, erected, constructed, installed, or placed upon the leased premises shall be and remain the property of the Lessee until the expiration of the lease term, or until this lease shall be sooner terminated as herein provided. Except as otherwise provided in this lease, upon such expiration or sooner termination of this lease, title to such Improvements shall automatically pass to, vest in, and belong to Authority, free of all liens and claims, without further action on the part of either party and without cost or charge to Authority. During

the lease term or until the earlier termination of this lease as herein provided, Lessee alone shall be entitled to claim depreciation on the Improvements for all taxation purposes.

Lessee will have the right, prior to termination or expiration of this lease, to remove any furnishings, trade fixtures, equipment, and other improvements that have not assumed the nature of realty, provided that Lessee is not then in default hereunder and that Lessee's removal of same does not cause damage to the premises and remaining improvements, and that Lessee repairs any damage that is caused by such removal. Any property or improvements 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 5.9 Advertising and signs. Lessee may erect signs on or about the premises, provided, however, that Lessee's installation or operation of signs on the Airport shall be subject to the prior written approval of the Authority at its sole discretion as to the number, size, height, location, color, and general type and design. Signs shall not be placed outside the boundaries of the leased premises.

ARTICLE 6

UTILITIES

Lessee must extend to the premises and install thereon, at its own expense, any required utilities not already in place. In

connection therewith, Authority will grant such utility easements as are reasonably required therefor.

Lessee must pay for all gas, electric, telephone, cable TV, water, sewage, trash removal, and any other utilities consumed within the leased premises.

Lessee agrees not to disturb, damage, or interfere with, in any way, any existing utility easements, utility lines, or F.A.A. cables on the premises, and agrees not to pave over, or otherwise impair or impede the Authority's or F.A.A.'s access to any utilities or F.A.A. cables, except as may be approved in writing by the Authority.

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

ASSIGNMENTS, SUBLEASES, AND LEASEHOLD MORTGAGES

Section 7.1 Assignments. Except as otherwise provided in this Article 7, neither Lessee, nor Lessee's successors or assigns, shall assign, mortgage, pledge, or otherwise transfer or encumber this lease, in whole or in part (herein an "assignment"), and any such attempted assignment shall be

voidable by the Authority, unless Lessee first obtains written consent of the Authority's Board of Port Commissioners or their authorized designee, which may be withheld upon any reasonable grounds.

Any change in the direct majority ownership interest in Lessee by transfer of capital stock or partnership interest or otherwise will be deemed an assignment for purposes of this section. 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 or Lessee's interest in this Lease to Aviation Facilities Company Management, LLC, or any wholly-owned subsidiary thereof or entity that it manages; 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 \$20 million; or
- (3) the transfer or assignment of Lessee's interest in this Lease to a holder of a leasehold mortgage which is compliance with Section 7.3 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.

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 subtenant ("transferee");
- (b) a copy of the material terms of the agreement of assignment, excluding financial terms;
- (c) reasonably satisfactory information as to the nature and character of the business of the proposed transferee, 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.

Lessee will provide Authority with a complete copy of any proposed assignment, mortgage, pledge, or encumbrance, prior to requesting Authority's consent. If the Authority withholds its consent to an assignment that a "leasehold mortgagee" (as defined in Section 7.3) proposes to make of this lease, the Authority will provide the reasons for such withholding of consent, or

rejection of the proposed assignee, in writing.

The consent by Authority to any assignment, mortgage, pledge, encumbrance, or transfer, shall not in any way be construed to relieve Lessee, or Lessee's successor or assign, from obtaining the Authority's written consent, if required hereunder, to any further assignment, mortgage, pledge, encumbrance, transfer, or sublease. Lessee will remain liable for the performance of this lease regardless of any assignment, sublease, or license, with or without consent of Authority, unless Authority expressly releases Lessee from such liability in writing.

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.

It is the intent of the Authority and Lessee, that Lessee will give parties which are, as of the date of this lease, tenants in the Authority's existing air freight building located on the north side of runway 06-24 (herein "Existing Tenants"), priority to sublease space within the new air freight building contemplated by this lease. Lessee agrees to make good faith efforts to work with such Existing Tenants to determine their needs and respective interest (if any) in subleasing space within the new air freight building before subleasing space to a new tenant in place of an Existing Tenant.

Section 7.3 Leasehold mortgages. The Authority will

consent to a proposed mortgage of Lessee's interests in this lease (a leasehold mortgage), and confirm that consent in a writing reasonably acceptable to the mortgagee or trustee, provided, however, that:

- (1) Such a mortgage may be granted only to a bona fide "Lending Institution."
- (2) 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.
- (3) The leasehold mortgage shall not be binding upon Authority in the enforcement of its rights and remedies herein and by law provided, 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.
- (4) The leasehold mortgage shall be specifically subject and subordinate to the rights of Lee County Port Authority and Lee County under the lease agreement between Authority and Lessee.
- (5) The mortgage shall provide that in the event of a foreclosure of such 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.
- (6) The mortgagee shall agree to give notice to the Authority in writing by certified mail or courier service of the occurrence of any event of default under the loan.
- (7) The mortgagee shall agree to give notice to the

Authority in writing by certified mail or courier of any default prior to initiating any foreclosure action. 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 mortgage, the Lessor may, at its option, cure said default in accordance with the terms of this lease.

- (8) The Authority will, in writing by certified mail or courier service, give notice to the mortgagee of the occurrence of any default under the lease.
- (9) The Authority will, by certified mail or courier, give the mortgagee at least forty-five (45) days written notice of any default prior to Authority initiating any lease termination. If any payment of rent is required to be made under the provisions of this lease and is not made or any covenant of this lease is not performed, thereby constituting a default by Lessee under the terms of the lease, the mortgagee may, at its option, cure said default.
- (10) In the event this lease is terminated, the leasehold mortgage shall not prevent the merger of the leasehold and fee estates in Lee County or the Lee County Port Authority, as the case may be.
- (11) The mortgage will not contain a future advance provision unless the proceeds of such future advances are used solely for construction of new or expanded buildings on the leased premises.
- (12) The mortgagee agrees to be bound by the terms and conditions of the lease in exercising its remedies under the mortgage and shall be bound by the assignment restrictions provided in this lease.
- (13) Any transfer of the leasehold interest from the lender to a third party shall be prohibited unless made to a capable operator as reasonably determined by Authority applying its own best judgment for the Airport, and approved by the Authority in advance.
- (14) Any amendment to the leasehold mortgage will be subject to review and approval of the Authority, which approval will not be unreasonably withheld or delayed provided that the leasehold mortgage remains in compliance with

the foregoing (1) through (13), and shall have no force or effect against Authority's and Lee County's interest in the premises until that consent is obtained and memorialized in writing.

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.

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.

Any leasehold mortgage shall be specifically subject and subordinate to the rights of Authority and Lee County hereunder.

Any mortgage on this lease or the interest of Lessee hereunder without full compliance with any and all requirements hereunder shall be invalid and of no effect against Authority.

ARTICLE 8

SECURITY DEPOSIT/PERFORMANCE GUARANTY

Within ten (10) days of the Effective Date of this lease, Lessee will deliver to the Authority the amount of \$25,000.00, to be paid by certified check or cashier's check, as a security deposit 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, throughout the term of this lease; failure to do so will be a material breach and a default entitling Authority to terminate pursuant to Section 14.3.

If Lessee defaults on any duty under this lease, Authority may apply the security deposit to damages sustained. If Lessee faithfully performs the obligations of this lease and timely vacates the premises and removes its equipment upon expiration, Authority will repay the security deposit, without interest, within forty-five (45) days after such expiration and Lessee's timely vacation of the premises and removal.

In lieu of a cash security deposit, Lessee may deliver to Authority, within the time required above, an irrevocable letter of credit, in the amount stated above, 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, throughout

the term of this lease. The letter of credit shall permit partial drawings and 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. If the letter of credit is not to be renewed, Lessee shall deliver a replacement letter of credit to the Authority at least thirty (30) days before expiration of the current letter of credit. If the letter of credit is drawn upon, Lessee shall replenish or replace the same so as to always maintain the full amount required under this Article available for Authority's protection.

The letter of credit shall be issued by a commercial bank acceptable to Authority 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. If at any time the financial condition of such issuer changes in any materially adverse way, as determined by Authority in its sole discretion, then Lessee shall within five (5) days of written notice from Authority, deliver to Authority a replacement letter of credit which otherwise meets the requirements of this lease and Lessee'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, Authority shall have the right under such circumstances to immediately, and without

further notice to Lessee, present a draw under the letter of credit for payment and to hold the proceeds thereof.

In the event the issuer of a letter of credit held by Authority is insolvent or is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation, or any successor or similar entity, or if a trustee, receiver, or liquidator is appointed for the issuer, then, effective as of the date of such occurrence, said letter of credit shall be deemed to not meet the requirements of this Section, and Lessee shall within five (5) days of written notice from Authority, deliver to Authority a replacement letter of credit which otherwise meets the requirements of this lease and Lessee'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; or alternatively Lessee shall, within such five (5) day period deliver cash or certified check or cashier's check to Authority in the amount required above.

ARTICLE 9

LESSEE'S STANDARDS OF OPERATION

Section 9.1 General. Lessee will, in good faith and using due diligence, seek to obtain all required permits and approvals, and to complete all construction and open the facility, as promptly as possible. Once the facility is open,

Lessee will continuously operate the facility, and maintain and operate the "Minimum Required Improvements" set forth in Section 5.2 above.

Section 9.2 Premises. Lessee will maintain the premises, or cause the premises to be maintained, in a first class manner with regard to safety, and cause the premises to be kept clean and free from garbage, rubbish, refuse, dust, dirt, insects, rodents and vermin. Lessee will store and use any hazardous materials in accordance with all applicable laws.

Section 9.3 Cleanliness. Lessee shall keep the premises clean and shall dispose of all debris and other waste matter which may accumulate, and shall provide, or have its subtenants provide, adequate metal dumpsters, with proper covers, and regular trash removal service, for waste generated within the premises.

ARTICLE 10

RIGHT OF ENTRY

Authority's agents or employees will have the right to enter the leased premises to:

- (1) as coordinated with Lessee, view and inspect the premises, or make repairs any time during Lessee's regular business hours;
- (2) view and inspect the premises or make repairs at any time in case of emergency; and
- (3) perform any and all things which Lessee is obligated to do and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs, and

replacements to the premises, unless Lessee already is making a reasonable effort to effectuate corrective measures. The 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, or as may be further amended, renumbered, or replaced), 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 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:

- (1) 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 subtenants, 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);

- (2) any and all injury, loss, or damage, of any nature whatsoever, to any person or property in connection with the installation, use, maintenance, repairs, and removal of the USTs or other tanks, including but not necessarily limited to leaks, pollution, or other contamination to the environment; and
- (3) any and all fines or penalties imposed on the Authority or Lee County by any governmental agency (including but not limited to the Federal Aviation Administration and the Transportation Security Administration) as a result of the failure of Lessee or its agents, employees, or contractors, to abide by or comply with any statute, ordinance, rule, regulation, or other requirement (including but not limited to environmental damage or breaches of the Airport's security).

ARTICLE 13

INSURANCE

Section 13.1 Insurance during term of lease. Lessee must procure and maintain, effective upon or prior to the start of any construction (except as specified in item (6) below), and during the remainder of the lease term, at its own expense, for the protection of the Authority and Lessee, in form satisfactory to Authority, from one or more insurers qualified to do business in Florida:

- (1) Commercial general liability insurance, including premises, operations, airside automobile, and contractual liability, with a minimum combined single limit of \$10,000,000.00, and products-completed operations, with a minimum limit of \$10 million aggregate.
- (2) Business automobile liability insurance, covering all owned, leased, hired, and non-owned vehicles, with a minimum combined single limit of \$5,000,000.00.

- (3) Property insurance for all risks of physical loss or damage to the premises and improvements including loss or damage by fire, windstorm, and other such causes commonly referred to as "extended coverages." Coverages must be maintained in an amount sufficient to prevent any party from being a co-insurer on any part of the risk, but the amount must be not less than the full replacement value.
- (4) Workers' compensation insurance, if, and as, required by Florida law.
- (5) Employer's liability insurance, with a limit of at least \$1,000,000.00.
- (6) Pollution Legal Liability Insurance, effective upon or prior to the issuance of a certificate of occupancy for the facility, with limits of at least \$2,000,000.00 per occurrence, and \$4,000,000.00 annual aggregate, with an extended recovery period of at least two (2) years beyond the last day of the term of this lease, and including coverage for:
 - (a) third-party claims for on and off-site bodily injury and property damage; and
 - (b) claims resulting in bodily injury property damage or cleanup costs;

Section 13.2 Contractor's insurance. In addition to the insurance required above, prior to commencement of any construction work on the premises, Lessee must, at its own expense, require its general contractor or contractors to procure and maintain, for the protection of the Authority and Lessee, in form satisfactory to Authority, from one or more insurers qualified to do business in Florida:

- (1) Commercial general liability insurance, including premises, operations, airside automobile, products-completed operations, and contractual liability, with minimum limits of \$2 million per occurrence and \$4 million aggregate.

- (2) Workers' compensation insurance, in the amounts required by Florida law.
- (3) Inland Marine Builder's Risk Insurance, written on an all-risk, replacement cost, and completed value form basis, in an amount equal to at least 100% of the contract price of the work.
- (4) Contractor's Pollution Legal Liability Insurance, including Errors & Omissions, and providing complete professional service coverage, including coverage for pollution liability that is the result of a breach of professional duties, for losses caused by pollution conditions that arise from the operations of the contractor, with limits of at least \$2,000,000 per occurrence, and \$4,000,000 annual aggregate, with an extended recovery period of at least two (2) years beyond the last day of the term of this lease, and including coverage for:
 - (A) third-party claims for on and off-site bodily injury and property damage; and
 - (B) claims resulting in bodily injury property damage or cleanup costs;
- (5) Contractor's Professional Errors & Omissions Liability Insurance, with limits of at least \$1,000,000 per occurrence, and \$2,000,000 annual aggregate.

Section 13.3 General insurance requirements. Except for the workers compensation insurance and the employers liability insurance, the Authority must be named as additional insured in all insurance policies required by this lease, to the full limits of the policy, even if those limits are in excess of the limits required by this lease. Lessee's and Lessee's contractors' insurance policies will be primary and non-contributory and include a waiver of subrogation in favor of the Authority.

Lessee shall be deliver to Authority, prior to issuance of a Work Permit or Notice to Proceed by the Authority, and prior to

Lessee's commencement of any construction or occupation or use of the premises, and throughout the term of this lease, copies of insurance certificates evidencing the required coverages. The Authority reserves the right to additionally require copies of the declarations and endorsements pages from any required insurance policies, or copies of the applicable policy language effecting coverage required by this Article. Each such policy or certificate shall contain a valid provision or endorsement that "This policy will not be canceled or materially changed or altered without first giving advance written notice to the Lee County Port Authority."

Maintenance of the above required insurance is a material element of this lease; Lessee's failure to obtain and maintain or renew such coverage, or cause such coverage to be obtained, maintained, or renewed, or to provide evidence of same, will be considered a material breach of this lease.

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

agreement after receipt of written notice of breach from the Authority;

- (3) Lessee becomes a corporation in dissolution for a period exceeding six (6) months; or
- (4) Lessee abandons, deserts, vacates or discontinues its operation of the business herein authorized without prior written consent of Authority (except that vacancies due to Lessee's inability to secure subtenants willing to pay reasonable rental rates will not trigger this item (4) .

Section 14.2 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 14.3 Authority's remedies. In addition to all other remedies provided herein or at law, Authority will have the cumulative rights to terminate this lease, and to accelerate the maturity of all rent due and to become due during the remainder of the term, by giving at least thirty (30) days written notice to Lessee, if Lessee is in default of this lease as set forth in Section 14.1 above, and such default is not cured to the Authority's reasonable satisfaction:

- (A) within thirty (30) days after the Authority gives Lessee written notice of the default, or,
- (B) if any such default (other than the payment of rent or money) is not curable within thirty (30) days, Lessee fails to demonstrate to the Authority within said thirty (30) day period that it has commenced curing the default, or, once started, Lessee fails to diligently pursue the cure of such default to completion.

ARTICLE 15

CASUALTY AND CONDEMNATION

Section 15.1 Notice to Authority. If the premises or any improvement thereon, such as the air freight building, 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 insurable cause not near end of extended term, or minor damage. If any structure or building is damaged and:

- (A) such damage 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 such damage occurs within the initial term (as set forth in Section 2.1 above) or, if Lessee has exercised its option to extend the term (as set forth in Section 2.2 above), within the optional extended term, but not more than 3 years prior to the expiration date of such extended term; or
- (B) the structure or building is less than ten percent (10%) damaged, as determined by an "Independent Architect" as defined below;

then 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 premises and improvements existing immediately prior to the occurrence of such damage, and in accordance with the procedures set forth above for Lessee's initial construction (not limited to the Authority's

review and approval of plans), and all insurance proceeds shall be payable to the Leasehold Mortgagee, if any, to be held and applied to payment of the cost of restoration and repair of the leased premises and the improvements thereon. If there is no Leasehold Mortgagee, the insurance proceeds shall be applied to the restoration and repair cost directly by the 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 the cost of construction and repair, and who is selected by agreement between Authority and Lessee, or, if 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 of the two 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.

In the event of casualty, for which insurance proceeds are available and are less than ten (10) percent of the coverage limits of the insurance, such proceeds shall be paid by the insurer to Lessee to be used for and applied to the cost of restoration and repair of the damaged Improvements. In the event of casualty for which insurance proceeds are available and are

ten (10) percent or more of the coverage limits of the insurance, such proceeds paid by the insurer will be deposited with an "Insurance Trustee" to be used for restoration and repair of the damaged Improvements and disbursed based on monthly requisitions as restoration and repair proceeds to completion. The insurance trustee shall be a banking institution having a bank branch in Lee County and selected by mutual agreement among Authority, Lessee and Leasehold Mortgagee. If the proceeds are insufficient to pay the cost of restoration and repair, Lessee must pay the shortfall. If the proceeds exceed the cost of restoration and repair, Lessee will be entitled to the surplus, unless Lessee is in default under this lease. In the latter event, the surplus must be applied to the default; and the remainder, if any, will be paid to Lessee.

Section 15.3 Major damage due to uninsurable cause or near end of lease term. If any structure or building is damaged and:

- (A) such damage 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, if Lessee has exercised its option to extend the term (as set forth in Section 2.2 above); and
- (B) the structure or building is more than ten percent (10%) damaged, 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 said

casualty.

If Lessee exercises this option to terminate, then, after applying the insurance proceeds to the full payment of the leasehold mortgage, the excess thereof shall be split equally between Lessee and Authority, provided that at the written request of the Authority, given not later than ninety (90) days after Lessee's notice of its election to terminate, Lessee shall be responsible for the prompt demolition of, and removal from the premises, any existing improvements specified by Authority that are damaged and remaining after such damage or destruction.

If Lessee does not so exercise this option to terminate, then Lessee shall, at its own cost and expense, promptly repair, replace, and rebuild the damaged structures or buildings, at least to the extent of the value, and as nearly as practicable to the character, of the premises and the Minimum Required Improvements set forth in Section 5.2 existing immediately prior to the occurrence of such damage, and in accordance with the procedures set forth above for Lessee's initial construction (not limited to the Authority's review and approval of plans), and all insurance proceeds shall be handled and disbursed as provided in Section 15.2 above.

Section 15.4 Abatement of rents and other payments. If Lessee's business is stopped due to casualty to the Improvements, Lessee's obligation to pay rent and any other applicable fees or charges will abate from the date of said cessation of business,

until the date a certificate of occupancy for completion of Lessee's repairs is issued, or until Lessee reopens the premises for business (whichever occurs first), but in any event not to exceed a period of one year. 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 premises to the Authority.

Section 15.5 Condemnation; permanent taking.

(A) If at any time during the term of this lease or any extension thereof, the entire leased premises, or such a substantial portion thereof as would render the balance thereof not suitable for the use to which the leased premises was being utilized immediately prior thereto by the Lessee, as determined by Lessee in its sole but reasonable discretion, shall be taken or appropriated in the exercise of eminent domain by any competent authority for public or quasi-public use, this lease may be terminated at Lessee's written election, effective upon the date that title to the leased premises vests in the condemning authority, at which time all rights and obligations between the parties shall cease. Rents and other charges shall be prorated to the date of termination. The taking of any portion of the Improvements which:

- (i) prohibits the legal occupancy of the leased premises for the conduct of Lessee's business; or

- (ii) results in the loss of the rights of ingress and egress to the leased premises, as established (unless comparable access and facilities can be made available);

shall be considered such a substantial taking as would render the use of the leased premises not suitable for Lessee's use.

(B) In the event of a taking (or purchase in lieu thereof) resulting in the termination of this lease pursuant to the provisions of paragraph (A) of this Section, there shall be paid from any award or settlement (but excluding the amount awarded or paid to the Authority or Lee County for the value of the land without Improvements) first to the holder of any Leasehold Mortgage (securing the debt or other obligations incurred by Lessee in connection with the construction, operation, repair, replacement and improvements to and business operated at the leased premises and of the Improvements), the unpaid balance of said Leasehold Mortgage, together with any interest thereon accrued to the date of such payment. Lessee will be entitled to participate in any award or settlement resulting from the taking to the extent of:

- (i) Lessee's interest in the leased premises determined without regard to the termination of this lease by the taking or any unexercised options to extend the term;
- (ii) business damages and relocation costs; and
- (iii) the unamortized value of the leasehold improvements;

but only to the extent such amounts exceed the entitlement, as defined above, of the holders of any Leasehold Mortgages. This

lease will terminate on the date title to the leased premises vests in the taking authority. Rent will be prorated to the date of termination.

Section 15.6 Condemnation; use of proceeds by Lessee. In the event of a partial taking (or purchase in lieu thereof), not resulting in the termination of this lease pursuant to the provisions of paragraph (A) of Section 15.5 above, then if Lessee elects to make repairs to any Improvement(s) on the leased premises affected by such taking (or purchase in lieu thereof) to the extent necessary to restore the same to complete architectural units (to the extent feasible, taking into account the amount of land remaining after such taking or purchase), all compensation available or paid to Authority and Lessee (but excluding the amount awarded or paid to the Authority or Lee County for the value of the land without Improvements) upon such partial taking (or purchase) shall be paid to Lessee for the purpose of paying towards the cost of such restoration.

Section 15.7 Condemnation; temporary taking. If less than the whole of the leased premises or less than such portion thereof as would render the use of the leased premises not suitable for Lessee's purposes as aforesaid is taken for a period of less than one (1) year, Lessee shall be entitled to a reduction of rental by a fraction, the numerator of which shall be the number of square feet of the Improvements taken or

condemned and the denominator of which shall be the square footage of the leased premises, upon such date as possession is surrendered to the taking authority and continuing until possession is restored to the Lessee.

Section 15.8 Condemnation; use of proceeds by Leasehold Mortgagee. All condemnation proceeds (but excluding the amount awarded or paid to the Authority or Lee County for the value of the land without Improvements) payable as a result of a partial taking of any portion of the leased premises which does not result in a termination of the lease, shall be payable to the Leasehold Mortgagee to be held by the Leasehold Mortgagee and applied to payment of the cost of restoration and repair of the leased premises and the Improvements thereon.

Section 15.9 Definition of "taking". The term "taking" includes any taking by a governmental body or quasi-governmental body, or by a public or private utility authorized by law to exercise the power of eminent domain, and includes a voluntary sale to such body or entity as an alternative to taking.

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, 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.

ARTICLE 17

COMPLIANCE WITH ENVIRONMENTAL LAWS

Section 17.1 Covenants and Indemnity. As a material inducement to Authority to lease the premises to Lessee, Lessee covenants and warrants that Lessee and Lessee's use of the premises will at all times comply with and conform to all Environmental Laws. Lessee agrees not to cause a Release of any Hazardous Substance, or otherwise violate any Environmental Law with respect to the premises, and will release, hold harmless, and indemnify Authority for any and all claims, demands, damages, actions, causes of action, and suits, whether at law or in equity, of any nature whatsoever, for any third party claims with respect to Lessee's breach of the covenants in this Article 17. Lessee will release the Authority from, and Authority will not be liable for, any damages, including but not limited to general, special, or consequential damages (such as delays, loss of customers, or business interruption), related to the environmental condition of the leased premises, except for any environmental contamination existing prior to the date of this

lease, or subsequently caused by Authority or an adjoining tenant or other third party on adjoining land which, through no fault of Lessee, spreads to the premises leased herein.

Section 17.2 Definitions. For purposes of this lease:

"Environmental Law" shall include any and all federal, state, county, municipal, local or other 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, including the Comprehensive Environmental Response and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), the Federal Water Pollution Control Act, as amended, and the Clean Water Act, as amended.

"Handling" shall include use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

"Hazardous Substance" shall mean and refer to asbestos, urea formaldehyde, mold, radon, lead paint, polychlorinated biphenyls,

nuclear fuel or materials, explosives, known carcinogens, petroleum products and byproducts (including crude oil or any fraction thereof), and any pollutant, contaminant, chemical, material, substance or waste, defined as hazardous, toxic or dangerous or as a pollutant or contaminant in, or the use, manufacture, generation, storage, treatment, transportation, release or disposal of which is regulated by, any Environmental Law.

"Release" shall mean and refer to any spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, drums, containers, tanks, or other receptacles containing or previously containing any Hazardous Substance.

ARTICLE 18

STORM WATER COMPLIANCE

Section 18.1 Definitions. For purposes of this Article, the following definitions apply:

"Storm water" - Storm water runoff and surface water runoff and drainage.

"Significant materials" - Includes, but is not limited to -- raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products, raw materials used in food processing or production; hazardous substances designated under Section 181(14) of the CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA;

fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have a potential to be released with storm water discharges. (See 40 CFR 122.26(b)(12).)

"Best Management Practices (BMP)" - Practices employed to prevent or reduce source water pollution, such as the construction of runoff-retention basins and replanting eroding surfaces.

Section 18.2 Acknowledgments.

(A) Notwithstanding any other provisions of this Lease, Lessee acknowledges that the Airport is subject to federal storm water regulations, 40 CFR Part 122, and, if applicable, state storm water regulations, Chapter 373, Part IV, Florida Statutes. Lessee further acknowledges that it is familiar with these storm water regulations; and that it is aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations of those regulations.

(B) Authority has taken steps necessary to apply for or obtain a storm water discharge permit as required by the applicable regulations for the Airport, including the Leased Premises. Lessee acknowledges that the storm water discharge permit issued to the Airport may name the Lessee as a co-permittee.

(C) Notwithstanding any other provision or terms of this lease, including the Lessee's right to quiet enjoyment, Authority and Lessee acknowledge that close cooperation is necessary to ensure compliance with any storm water discharge permit terms and

conditions, as well as to ensure safety and to minimize costs. Lessee acknowledges that, as discussed more fully below, it may have to undertake to minimize the exposure of storm water to "significant materials" generated, stored, handled, or otherwise used by the Lessee, as defined in the federal storm water regulations, by implementing and maintaining "Best Management Practices."

(D) Lessee acknowledges that the Airport's storm water discharge permit (NPDES Permit Number FLR05A513, or its successor) is incorporated by reference into this Lease.

Section 18.3 Permit compliance.

(A) Authority will provide Lessee with written notice of the storm water discharge permit requirements in the Airport's storm water permit that Lessee will be obligated to perform from time to time, including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of good housekeeping measures or Best Management Practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Lessee, within seven (7) days of receipt of such written notice, shall notify Authority in writing if it disputes any of the storm water discharge permit requirements it is being directed to undertake. If Lessee does not provide such timely notice, it is deemed to assent to undertake such requirements. If Lessee provides

Authority with timely written notice that it disputes such storm water discharge permit requirements, Authority and Lessee agree to negotiate a prompt resolution of their differences. Lessee warrants that it will not object to written notice from the Authority for purposes of delay or avoiding compliance.

(B) Lessee agrees to undertake, at its sole expense unless otherwise agreed to in writing between Authority and Lessee, those storm water discharge permit requirements for which it has received written notice. Lessee warrants that it shall meet any and all deadlines, that are either imposed on it without objection, or agreed to by the parties. Lessee acknowledges that time is of the essence.

(C) Authority agrees to provide Lessee, at its request, with any non-privileged information collected and submitted to any governmental entity pursuant to applicable storm water regulations.

(D) Lessee agrees that the terms and conditions of the Authority's storm water discharge permit may change from time to time and hereby appoints Authority as its agent to negotiate any such permit modifications with the appropriate governmental entity.

(E) Authority will give Lessee written notice of any breach by Lessee of the Authority's storm water discharge permit or the provisions of this section. Such a breach is material, and, if of a continuing nature, Authority may terminate this lease

pursuant to the terms of the lease. Lessee agrees to cure promptly any breach. Lessee acknowledges that the Airport's storm water discharge permit is incorporated by reference into this lease. Lessee covenants that its use of the premises will not cause any violation of said permit.

ARTICLE 19

WASTE; SURRENDER OF POSSESSION

Lessee 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 20

BROKERAGE COMMISSIONS

Authority and Lessee each represents and warrants to the other that it has not authorized or employed, or acted by implication to authorize or employ, any real estate broker or salesman to act for it in connection with this lease.

ARTICLE 21

CIVIL RIGHTS AND TITLE VI

Section 21.1 **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 21.2 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:

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 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.

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 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 21.3 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 21.4 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 21.5 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:

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

- CFR parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

ARTICLE 22

FAA CLAUSES

Section 22.1 ***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 lease as a condition precedent to the granting of

funds for the improvement of the Airport, or otherwise, 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 22.2 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 and 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 and 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 22.3 Subordination. This lease 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.

Section 22.4 Nonexclusivity. Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this lease are non-exclusive and the Authority reserves the right to grant similar privileges to another lessee or other lessees on other parts of the Airport.

Section 22.5 Nondiscrimination. Lessee will provide its services on a fair, equal, reasonable, and not unjustly discriminatory, basis to all users of the Airport. Lessee will charge fair, reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Lessee will be allowed to make reasonable and nondiscriminatory discounts, rebates, or other types of price reductions to volume purchasers. Lessee will operate its business so as to not cause any violation of the grant assurances the Authority has made to the Federal government in consideration for Federal grant assistance.

ARTICLE 23

QUIET ENJOYMENT

Lessee, upon paying the rent and observing and keeping all covenants, warranties, agreements and conditions of this lease on Lessee's part to be kept, shall quietly have, hold and enjoy the leased premises during the term, without any interruption or disturbance from the Authority, or anyone claiming by, through or under the Authority. This covenant shall be construed as running with the land to and against subsequent owners and successors in interest, and is not, nor shall it operate or be construed as a personal covenant of the Authority.

ARTICLE 24

AIRPORT SECURITY REQUIREMENTS

Lessee 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. Lessee may need access to these secure areas to complete the work required by this lease. Lessee 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 for breaches of security rules and

regulations by Lessee, its agents, employees, subcontractors, or invitees.

Lessee further acknowledges that its employees and agents 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 lease, or upon the resignation or dismissal of, or conclusion of any work justifying airport security access to, any agent, employee, subcontractor, or invitee of the Lessee, Lessee shall surrender any Airport Security Identification Badge held by the Lessee or by such agent, employee, subcontractor, or invitee. If Lessee has failed to surrender any such badge to the Authority within five (5) days, the Lessee will be assessed, and pay, a fee for each badge not returned, at the then-current amount set by the Authority for lost badge fees (such fee is currently \$100.00 per lost badge).

ARTICLE 25

GENERAL PROVISIONS

Section 25.1 **Notices.** Notice to Authority will be sufficient if sent by registered or certified mail, postage prepaid, or by courier, or by a nationally recognized overnight delivery service (e.g. Federal Express, Airborne Express, 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:

Via Courier:

AFCO Cargo RSW, LLC

Attn: President & CEO
45025 Aviation Drive, Suite 100
Dulles, VA 20166-7524

or

Via USPS:

AFCO Cargo RSW, LLC

Attn: President & CEO
P.O. Box 16860
Washington, DC 20041-6860

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 25.2 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 25.3 **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 25.4 **Time.** Time is of the essence in the performance of this agreement.

Section 25.5 **Governing law and venue.** This lease 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 25.6 **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 premises.

Section 25.7 **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 25.8 *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 25.9 *Administration of lease.* Whenever Lessee is required or permitted to obtain the approval of, consult with, give notice to, receive notice from, or otherwise deal with Authority, then, unless specifically provided to the contrary above, Lessee shall deal with Authority's authorized representative; and unless and until Authority gives Lessee written notice to the contrary, Authority's authorized representative shall be the Authority's Executive Director.

Section 25.10 *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 Lessee's interference or hindrance and regardless of Lessee's views and desires.

Section 25.11 *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 25.12 Lessee's noninterference with aircraft.

Lessee and its successors, assigns, and sublessees 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 Lessee.

ARTICLE 26

MISCELLANEOUS

Section 26.1 Entire agreement. This lease sets out the entire agreement between the parties for the described premises. There are no implied covenants or warranties. No agreement to modify this lease will be effective unless in writing and executed by both parties.

Section 26.2 Recording. At the time of the execution of this lease, the parties consent and agree that it or a memorandum thereof or short form lease may be recorded by Lessee

at Lessee's expense in the Lee County Land Records.

Section 26.3 Modification. This lease shall not be changed orally, but only by an agreement in writing executed by all parties hereto, with the same formality as the original lease.

Section 26.4 Estoppel letters. Each party agrees, at any time and from time to time, upon not less than thirty (30) days prior written request by the other party, to execute, acknowledge, and deliver to the requesting party a statement in writing, certifying (a) that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (b) the dates to which the rent and other charges have been paid in advance, if any; (c) whether there exists any known uncured default on the part of the requesting party, and if so, specifying the same with reasonable particularity; (d) expressing the commencement and termination dates of this lease; and (e) any other matters that may reasonably be requested; it being intended that any such statement delivered pursuant to this Section may be relied upon by prospective purchasers of the requesting party's interest or mortgagees of the requesting party's interest or assignees of any mortgage upon the requesting party's interest in the leased premises.

Section 26.5 Releases. In the event of any permitted

transfer of Lessee's interest in this lease, the Lessee (and in the case of any subsequent permitted transfers or conveyances, such subsequent grantor) shall be automatically relieved, from and after the date of such transfer or conveyance, of all liability accruing after such permitted transfer with respect to the performance of any covenant, condition, and agreement on the part of Lessee contained in this lease, it being intended hereby that the covenants, conditions, and agreements contained in this lease on the part of the Lessee shall, subject to the aforesaid, be binding on Lessee, its successors, and assigns, only during their respective periods of ownership of the leasehold estate. Notwithstanding the foregoing, Lessee and any subsequent grantor of the leasehold estate will remain liable, even after assignment transfer, or conveyance, for any rent payments or other liabilities which accrued during its tenancy and remain undischarged.

Section 26.6 **Successors and assigns.** Each and every provision in this lease shall bind and shall inure to the benefit of the parties hereto, their legal representatives, successors, and assigns.

Section 26.7 **Duties.** Any provision of this lease which permits or requires a party to take any particular action shall be deemed to permit or require as the case may be, the party to cause such action to be taken.

Section 26.8 **Delegation.** The delegation of a duty of a party shall not excuse a party from the primary obligation to perform such duty.

Section 26.9 **Costs.** Unless otherwise provided, each party shall perform its obligations at its own expense.

Section 26.10 **Construction.** Words denoting one gender include the other gender, the singular includes the plural, the plural includes the singular.

Section 26.11 **Authority to sign.** Each party hereby severally represents that it has been duly authorized to execute, deliver, and perform this lease through its members, officers, manager, or agents signing on its behalf and affixing any appropriate seal thereto.

Section 26.12 **Force majeure.** In the event that Authority or Lessee shall be delayed or hindered in or prevented from the performance of any act required hereunder, by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, national emergency, acts of God, weather, or other reasons of like nature beyond the control of the party claiming relief hereunder, then performance of such act, except for the payment by Lessee of Rent or any other amounts due to Authority, shall be excused for the period of the delay and the period for the performance of any such act

shall be extended for a period equivalent to the period of such delay, provided however, that nothing herein shall be construed to extend the term of this lease or any time period or date set forth in Article 2 above.

Section 26.13 Notice regarding public entity crimes.

Section 287.133(3) (a) F.S. (1995) may require the Authority to notify Lessee 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:

- (1) Contracting to provide goods or services to a public entity.
- (2) Submitting a bid on a contract for construction or repair of a public building or public work.
- (3) Submitting bids on leases of real property to a public entity.
- (4) 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.

Section 26.14 No third party beneficiaries. Nothing

contained herein shall create any relationship, contractual or otherwise with, or any rights in favor of, any third party.

Section 26.15 Termination under Section 287.135, F.S.

Notwithstanding any provision of this lease to the contrary, Authority will have the option to terminate this lease, in the exercise of its sole discretion, if Lessee is found to have submitted a false certification under Section 287.135 (5), F.S. (2016), or has been placed on either the Scrutinized Companies with Activities in Sudan List; the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; is engaged in business operations in Syria or has engaged in "Boycott Israel" activities as defined in Section 215.4725(1)(a) F.S. (2016), that result in Lessee being added to the Scrutinized Companies that Boycott Israel List, as described in Section 287.135 F.S. (2016).

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this agreement on the date first above written.

AFCO CARGO RSW, LLC

(Lessee)

By:  _____

Print Name: Charles Stipancic, Jr.

Title: President & CEO

Date: October 6, 2021

LEE COUNTY PORT AUTHORITY

By: _____
Chairman or Vice Chairman,
Lee County Port Authority
Board of Port Commissioners

Date: _____

Approved as to Form for the
Reliance of the Lee County
Port Authority only:

By: _____
Port Authority Attorney

ATTEST:
LINDA DOGGETT, CLERK

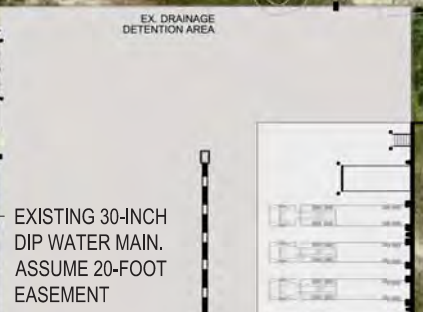
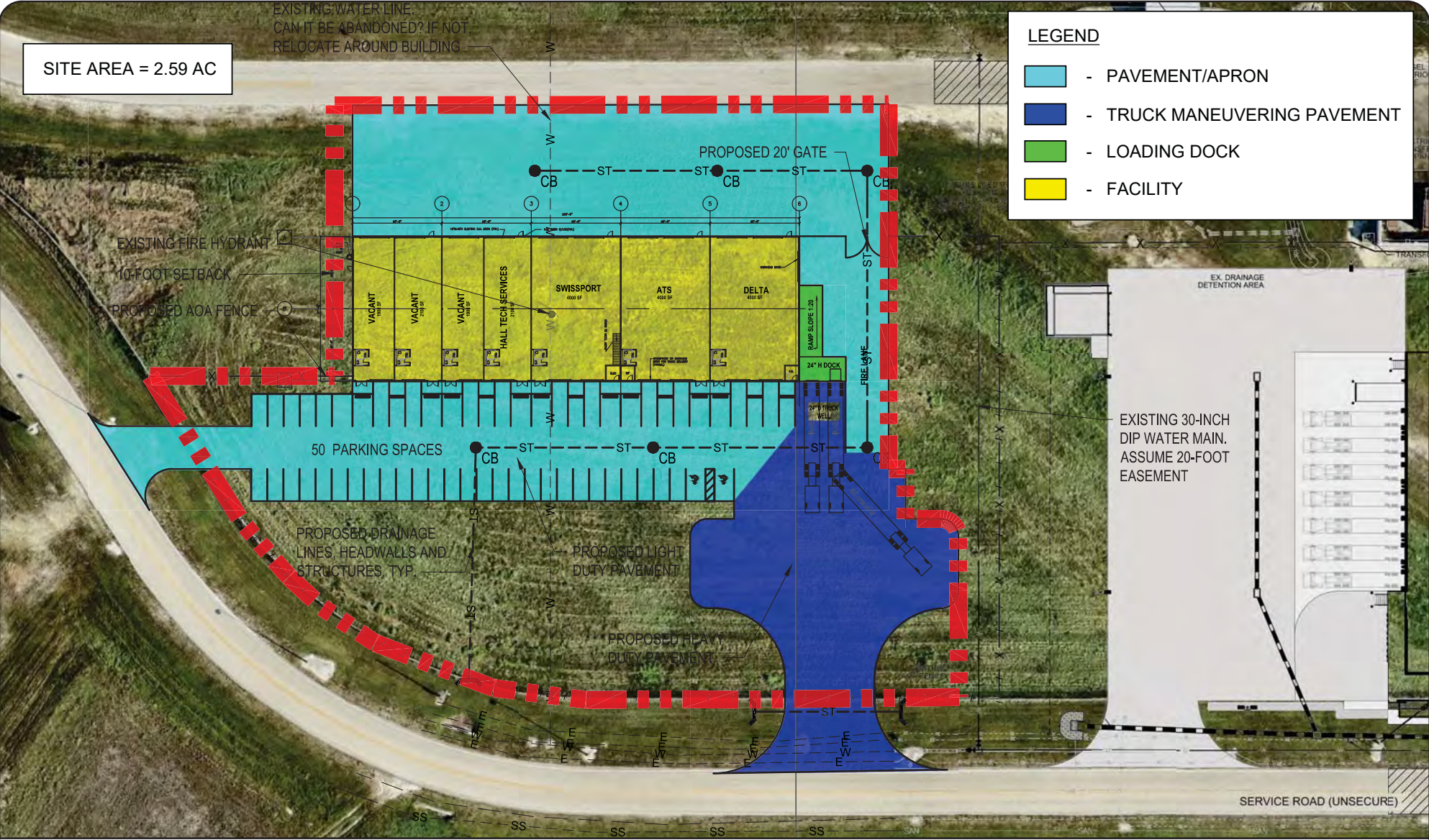
By: _____
Deputy Clerk

SITE AREA = 2.59 AC

EXISTING WATER LINE:
CAN IT BE ABANDONED? IF NOT
RELOCATE AROUND BUILDING

LEGEND

- PAVEMENT/APRON
- TRUCK MANEUVERING PAVEMENT
- LOADING DOCK
- FACILITY

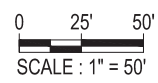


SOUTHWEST FLORIDA INTERNATIONAL AIRPORT / AFCO



EXHIBIT NO. 01
JULY 15, 2021

CIVIL LAYOUT



BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|--|---|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a proposed sublease from Ft. Myers Airport Plaza, LLC, to Airport RSW Donuts LLC to operate a Dunkin' franchise.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: 10 years, plus one option to extend by 5 years</p> <p>4. WHAT ACTION ACCOMPLISHES: Allows Ft. Myers Airport Plaza, LLC to sublease space to a Dunkin' franchisee.</p> | <p>5. CATEGORY: 9.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p> |
|---|---|

10. BACKGROUND:

The Authority and Ft. Myers Airport Plaza, LLC ("FMAP"), are parties to an agreement entitled "Ground Lease for Construction and Operation of a Gas Station and Convenience Store at Southwest Florida International Airport" dated May 9, 2011, and amended January 13, 2014. FMAP constructed the gas station and convenience store, and opened both for business in June 2014. The convenience store building was built to house both the 7-11 store, and an adjoining restaurant with a separate entrance. The 2014 amendment allowed that restaurant to be a Subway, or other brand, with the prior written consent of the Authority.

In 2016, with the Authority's consent, FMAP subleased the vacant shell space (approximately 1,800 sf) in the convenience store building to a Wendy's franchisee, Tinsley-Bridgeman, LLC. Due to the impacts of the Covid-19 pandemic, the Wendy's closed its doors on April 27, 2020. At that time, the closure was originally anticipated to last 6 weeks. The reopening of the location continued to be postponed indefinitely while the Wendy's operator considered long term impacts of the pandemic on the restaurant industry. As RSW air traffic picked back up and the cell phone lot became active, the Authority continued to periodically contact FMAP to see if Wendy's would be reopening. In August 2021, FMAP notified the Authority that Wendy's would not be reopening and that there was potential interest from a Dunkin' franchisee. On September 1, 2021, staff observed the Wendy's operator remove its fixtures and equipment from the restaurant space.

FMAP now proposes to sublease the restaurant space (approximately 1,800 sf in the convenience store building) and the existing drive thru to a Dunkin' franchisee, Airport RSW Donuts LLC. Pursuant to the ground lease, the proposed sublease requires the Authority's consent. The sublease includes an initial term of ten (10) years, and one (1) option allowing the subtenant to extend the term by five (5) years. The proposed use is a Dunkin' shop with a drive thru. The operator, Michael Koroghlian, has been a Dunkin' franchisee for 15 years. He currently owns over 25 stores in south Florida, including 20 in Naples and Fort Myers. Mr. Koroghlian was named Franchisee of the Year in 2019 and Developer of the

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<i>Benjamin R. Siegel</i>

- | | |
|--|---|
| <p>12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:</p> <p>APPROVED</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)

Year in 2014 for the Southeast Region.

Pursuant to the ground lease, as amended, FMAP pays the Authority a concession fee of one percent (1%) of all Gross Revenue generated at the leased premises over \$1.5 million (including both the convenience store and restaurant space, but excluding gasoline, which is subject to a 1 cent per gallon flowage fee) per calendar year.

Approval of this agenda item by the Board of Port Commissioners will not operate as a waiver of any prohibition in the master lease against further assignment or subletting without the Authority's consent.

Attachments:

1. Lease summary for existing ground lease (as amended January 13, 2014)
2. Proposed sublease to Airport RSW Donuts LLC

LEASE SUMMARY

[Including Effects of First Amendment]

Agreement: Ground Lease for Construction and Operation of a Gas Station and Convenience Store at Southwest Florida International Airport

Tenant Ft. Myers Airport Plaza, LLC
12680 Darby Brooke Court
Woodbridge, VA 22192

Leased Premises: Parcel 1A (approx. 2.24 acres) and
Parcel 1B (approx. 0.5 acres)

Required Uses: a gas station with at least 12 fueling positions, and a 1500 to 3500 sf “7-Eleven” convenience store

Permitted Use(s): a “Subway” branded restaurant (or other brand with LCPA’s consent) located in the same building as the convenience store; a single lane automated car wash; sale of CNG or other alternative fuels; incidental sale of auto parts and supplies normally carried by a convenience store

Term of Lease: initial term will expire on September 30, 2037; tenant has two (2) options to extend by five (5) years each

Rent: Phase 1
Construction Period Rent of \$2,727.46 per month, commencing on the earlier of commencement of construction or 18 months after Board approval of the lease; and continuing until the day before the DBO

Starting upon DBO (12/1/2013):

- (a) \$12,604.34 per month until the addition of Parcel 1B to the leased premises (December 1, 2013, at the latest); then
- (b) \$15,398.13 per month, plus one cent per gallon of fuel dispensed

Starting on Subway (*or other restaurant brand*) DBO:

- (a) Phase 1A Ground Rent increases by \$1,000 per month; and
- (b) Phase 1 Concession Fee of 1% of Gross Revenue exceeding \$1.5 million per calendar year.

Escalations

Ground Rents to be adjusted for CPI beginning December 1, 2013, and every three (3) years thereafter, subject to a 9% cap on any individual adjustment.

Security/Perf. Guaranty: \$50,000 irrevocable letter of credit

Insurance: Commercial General Liability: \$3,000,000
Auto: \$2,000,000
Property insurance: full replacement value
Workers' Compensation and Employer's Liability: \$500,000/
\$500,000/\$500,000
Environmental: \$2,000,000

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.

SUBLEASE

This Sublease (“Sublease”), dated September __, 2021 (“Effective Date”), is between Fort Myers Airport Plaza, LLC, a Florida limited liability company, with offices at 2900 Telestar Court, Falls Church, VA 22042 (“Landlord”) and _____, LLC, a Florida limited liability company d/b/a Dunkin’ (“Tenant”) with offices at 6685 Collier Blvd., Naples, FL 34114 (each a “Party,” and collectively, the “Parties”).

WHEREAS, Landlord is the tenant under the Ground Lease for Construction and Operation of Gas Station and Convenience Store at Southwest Florida International Airport entered into on or about May 9, 2011, as amended by that certain First Amendment to Ground Lease dated May 9, 2011 (“Master Lease”), attached as Exhibit A hereto, between Lee County Port Authority (“Master Landlord”) and Landlord, under which Landlord leases the Premises (as defined in the Master Lease) at the Southwest Florida International Airport (the “Airport”); and

WHEREAS, the Parties wish to enter into this Sublease under which part of the Premises will be sublet by Landlord to the Tenant, with the understanding and agreement that this Sublease is subordinate to the Master Lease. Any capitalized terms used herein that are not defined herein shall have the meanings given to them in the Master Lease.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Subleased Space. During the Term (defined below), Landlord hereby subleases to Tenant, and Tenant hereby subleases from Landlord, approximately eighteen hundred (1,800) rentable square feet within the building at the service center known as the “Airport Travel Center” located on Airport Terminal Access Road, shown on Exhibit B hereto (“Subleased Space”). During the Term, Tenant shall also have exclusive use of the existing drive thru facility. During the Term, Landlord also grants to Tenant, on a non-exclusive basis and in common with other tenants at the Airport Travel Center, a license to use the Common Area (defined below) for vehicle parking and vehicular and pedestrian ingress and egress to and from the Subleased Space.

2. Term.

2.1 Initial Term. The initial term (“Initial Term”) of this Sublease is ten (10) Lease Years beginning on the Rent Start Date. The first Lease Year will be from the Rent Start Date to the first day of the month that is twelve (12) full months thereafter (i.e., twelve full months, plus the partial first month if the Rent Start Date falls on a day other than the first day of a month). For examples, (i) if the Rent Start Date is June 5, 2015, then the first Lease Year would be June 5, 2015 through June 30, 2016, or (ii) if the Rent Start Date is June 1, 2015, then the first Lease Year would be June 1, 2015 through May 31, 2016. Subsequent Lease Years will be each twelve (12) month period thereafter. The “Rent Start Date” means the earlier of: (i) one hundred and twenty (120) days after the Delivery Date (defined below), provided the Airport Travel Center is fully operational, or (ii) the date Tenant opens for business. For purposes of this provision, the Delivery Date shall mean the date (after Landlord provides Tenant Master Landlord’s written consent to this Sublease) on which Landlord delivers possession of the Subleased Space to Tenant for commencement of construction of Tenant’s improvements hereunder. For avoidance of doubt, in no event may the Delivery Date occur prior to Landlord providing to Tenant Master Landlord’s written consent to this Sublease. If, through no fault on the part of Tenant, necessary permits are not received within thirty (30) days following Tenant’s submission of construction plans, or if Tenant’s Work is delayed for reason(s) beyond Tenant’s reasonable control, then the Rent Start Date will be appropriately extended on a day-for-day basis with such delays. For clarity and notwithstanding anything to the contrary in this Sublease, Tenant shall not be required to open for business and shall not be required to begin to pay Rent until Landlord has completed improvements to the building in which the Subleased Space is located as well as the remainder of the Airport Travel Center and the Airport Travel Center is fully equipped, stocked, staffed and operational and is open to the public; provided that Tenant shall be required to begin to pay Rent if it opens for business at an earlier time.

2.2 Term Extensions. Provided Tenant is not then in default, Tenant shall have the option to extend the Term for one (1) additional period of five (5) years by providing Landlord with written notice (“Renewal Notice”) of Tenant’s election to extend the Initial Term or the then-current Extension, no later than ninety (90) days prior to the expiration of the Initial Term or the then-current Extension. Each such Extension shall commence on the day following the expiration of the Initial Term or the then-current Extension. The Initial Term and any Extensions are collectively

referred to as the "Term." Landlord shall grant an additional five (5) year option if Landlord exercises its option (at Landlord's sole discretion) with Master Landlord.

3. Rent. Beginning on the Rent Start Date, Tenant shall pay Landlord the following rent ("Rent") for each Lease Year without any abatement, deduction or setoff whatsoever, except as expressly stated in this Sublease: (i) Base Rent (defined below), plus (ii) Concession Fee (defined below). The timing of the Rent payments will be as stated in Section 4 below. If any Rent payment is not timely made, Tenant shall also owe Landlord a late payment fee equal to five (5%) percent of such Rent payment, plus interest at the rate of one point five percent (1.5%) per month or the maximum rate allowed by law, if lower; such late payment fee and interest to be in addition to Landlord's other remedies.

3.1 Base Rent. The Base Rent for each Lease Year means the greater of: (i) the Percentage Rent (defined below) for such Lease Year or (ii) the Minimum Annual Guarantee ("MAG") (defined below) for such Lease Year.

(a) Percentage Rent. For each of the first five (5) Lease Years, the Percentage Rent means an amount equal to: (i) eight (8%) percent of the first nine hundred thirty-six thousand (\$936,000) dollars of Gross Revenues (defined below) for such Lease Year, plus (ii) ten and a half (10.5%) percent of any Gross Revenues exceeding nine hundred thirty-six thousand (\$936,000) dollars for such Lease Year. For the sixth Lease Year and each Lease Year thereafter, the Percentage Rent means an amount equal to nine (9%) percent of all Gross Revenues, plus an additional one and a half (1.5%) percent of any Gross Revenues exceeding nine hundred thirty-six thousand (\$936,000) dollars for such Lease Year. Percentage Rent for each Lease Year is only due and payable to the extent such amount exceeds the MAG for that Lease Year.

(b) First Year MAG. If the Rent Start Date falls on the first day of a month, then the MAG for the first Lease Year shall be sixty-five thousand (\$65,000) dollars. If the Rent Start Date falls on a day other than the first day of a month, then the MAG for the first Lease Year shall be: (i) sixty-five thousand (\$65,000) dollars, times (ii) the number of days from and including the Rent Start Date to and including the last day of the month plus three hundred sixty five (365) days, divided by (iii) three hundred sixty five (365) days. For example, if the Rent Start Date is June 5, 2014, then the MAG for the first Lease Year (i.e., the MAG for June 5, 2014 through June 30, 2015) would be \$69,630.

(c) Subsequent Year MAG. The MAG for each subsequent Lease Year shall be increased by a percent equal to the percentage increase, if any, of the CPI (defined below) during the twelve (12) full month period preceding the first day of each such subsequent Lease Year, up to a maximum of 3% for any year. For the purpose of calculating this increase for the second Lease Year, the MAG for the first Lease Year shall be deemed to be \$65,000 (i.e., notwithstanding that the MAG for the first Lease Year may be higher than \$65,000). For example, if the second Lease Year starts on July 1, 2016, and if the CPI for May 2016 is 2% higher than the CPI for June 2015, then the MAG for the second Lease Year would be the \$66,300. If the CPI declines during the subject twelve month reference period, then the MAG shall remain unchanged.

3.2 Concession Fee. Concession Fee with respect to a Lease Year means an amount equal to one (1%) percent of Gross Revenues for that Lease Year commencing in Year one of the Lease; provided that if the concession fee percentage due and payable by Landlord to Master Landlord under the Master Lease is reduced or eliminated with respect to any particular period of time, then the Concession Fee percentage due and payable by Tenant to Landlord under this Sublease shall likewise be reduced or eliminated with respect to the same period of time. For clarity, it is acknowledged and agreed that any deduction from sales provided under the Master Lease before application of the concession fee (which deduction is currently \$1.5 million per year), as the same may be changed, shall be solely for the Landlord and not for the Tenant.

3.3 Definitions.

(a) "Gross Revenues" of a Lease Year means all revenues, receipts and income from the sale, lease or rental of goods, products or merchandise during such Lease Year from all businesses conducted by or through Tenant on or from the Subleased Space, regardless of whether delivered on or off the Subleased Space, how or by whom payment is made (cash, credit or otherwise), excluding only the following: (i) Federal, state, county/city, and municipal sales taxes or other taxes separately stated and collected from customers; (ii) the amount of lottery proceeds remitted

to the State of Florida; (iii) ATM surcharge or transaction fees paid directly to the ATM provider or banking institution; (iv) refunds given for returned goods, products or merchandise; (v) receipts from the sale of or the trade-in value of any trade fixtures; (vi) receipts in the form of rebates or refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers or manufacturers; (vii) insurance proceeds; (viii) tax rebates; (ix) inter-store transfers; (x) amounts for coupons and other forms of discounts (including, but not limited to, complimentary customer and employee meals); (xi) receipts from the sale of uniforms or clothing to Tenant's employees where it is required that such uniforms or clothing be worn by said employees; and (xii) tips and gratuities. If Tenant fails for any reason to charge for or collect the value of any good, product, merchandise or service, the amount customarily charged by Tenant for such good, product, merchandise or service shall be included in the calculation of Gross Revenues, unless Tenant intended not to charge or collect. No deduction shall be made from the calculation of Gross Revenues by reason of any credit loss, charge or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements.

(b) "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, United States city average, all items (1982 - 1984 = 100), not seasonally adjusted, or any successor thereto, as promulgated by the Bureau of Labor Statistics of the United States Department of Labor. If the CPI is not available, a reliable governmental or other nonpartisan publication evaluating information theretofore used in determining the Consumer Price Index shall be used.

4. Rent Payments.

4.1 Except as described in Section 4.2 below, commencing on the Rent Start Date, Tenant shall pay Landlord Base Rent on a monthly basis, as follows. Tenant shall pay Landlord 1/12 of the MAG on the first day of each month. To the extent Percentage Rent (using sales thresholds equal to 1/12 of the annual thresholds described in Section 3.1(a) above) for such month exceeds 1/12 of MAG, Tenant shall pay over to Landlord a sum equal to such excess on or before the 15th day of the following month.

4.2 Notwithstanding the foregoing, upon Date of Delivery of the Subleased Space from Landlord to Tenant after substantial completion of construction of the Airport Travel Center by Landlord, Tenant shall pay over to Landlord a sum equal to 1/12 of the MAG as the last month's MAG otherwise due and payable hereunder at the start of the last month of operations hereunder.

4.3 If the Sublease commences on other than first day of the month, the MAG Payment for that month shall be reduced to a sum equal to: 1/12 of the MAG times a fraction, the numerator of which is the number of days from the Rent Start Date to the end of the applicable month, and the denominator is the number of days in that month.

4.4 If the amount paid by Tenant in any Lease Year as Base Rent, is less than the amount due as Base Rent, the Tenant shall pay Landlord the deficiency within 15 days following the end of the Lease Year. If the amount paid by Tenant in any Lease Year as Base Rent, exceeds the amount due as Base Rent, the overpayment shall be applied to reduce Rents and fees next due hereunder, except in the last year of the Term, in which case Landlord shall reimburse Tenant for such overpayment on or before the 15th day following the last day of the applicable Lease Year.

4.5 Concession Fee Payments. Concession Fee Payments shall be as follows: Within fifteen (15) after the end of each month beginning with the third Lease Year, Tenant shall pay Landlord an amount equal to one point (1%) percent of Gross Revenues for such month.

4.6 Intentionally deleted.

4.7 Annual True-up. If, as of the end of the last month of a Lease Year, the total amount due for such Lease Year exceeds the amount paid by Tenant for such Lease Year, Tenant shall promptly pay the difference to Landlord. If the amount paid by Tenant for such Lease Year exceeds the amount due for such Lease Year, such excess shall be applied: (i) first, to any amounts then owed the Landlord, and (ii) thereafter to the Rent due in the following Lease Year (or to Tenant within fifteen (15) days if the excess is from the last Lease Year or last partial Lease Year).

4.8 Reports.

(a) Within fifteen (15) days following the end of each month, whether or not a Percentage Rent Payment is due, Tenant shall furnish Landlord with a sales report generated from Tenant's POS, and a statement signed and certified by an authorized officer of Tenant to be correct, setting forth the Gross Revenues for such month. Such monthly report and certification shall be furnished along with each Percentage Rent Payment, or by themselves if no such payment is due. Additionally, within thirty (30) days following the end of each Lease Year, Tenant shall furnish Landlord with a statement, signed and certified by an authorized officer of Tenant to be correct, setting forth the amount of the Gross Revenues for such Lease Year.

(b) In addition, it is acknowledged that, under the Master Lease, the Landlord is required to provide monthly and annual accounting statements in form and detail satisfactory to the Master Landlord, as well as any other information reasonably requested by the Master Landlord, and that the Master Landlord may require reports to be delivered electronically; Tenant therefore acknowledges that it shall be required to comply with any such commercially reasonable requirements of the Master Landlord as to the form, detail, other information, or electronic delivery of all reports. Tenant shall also furnish any other reports, financial statements, or certifications as may be requested by the Master Landlord.

4.9 Books & Records. Tenant shall keep accurate books & records in accordance with GAAP. Such books & records shall be retained and be available for three (3) years from the end of each Lease Year, including three (3) years following the expiration or earlier termination of this Sublease. Master Landlord and Landlord shall have the right to examine and audit, at their expense, during normal business hours all such books & records related to Tenant's operations within the Subleased Space. If the books & records are kept at locations other than the Airport, Tenant shall, at its expense, arrange for them to be brought to a location convenient to the auditors for Master Landlord or Landlord in order to conduct the examination and audit. Books & records may be kept and provided in electronic format. In the absence of a default by Tenant related to the payment of Rent, Master Landlord and Landlord shall not conduct an audit or examination of Tenant's books and records under this Sublease and request the same for audit or examination more than once per Lease Year.

4.10 Landlord-Tenant Relation. Although Rent is partially based on a percentage of Gross Revenues, nothing herein shall be construed to make Landlord a partner, owner, or joint venturer of Tenant. The relationship between the Parties is and shall at all times remain that of Landlord and Tenant.

4.11 Taxes & Assessments. Tenant shall timely pay all Federal, State and local taxes and fees, and all special assessments of any kind, which are now or may hereafter be levied upon the business conducted by Tenant at the Subleased Space, or upon any of Tenant's property used in connection therewith, or upon any rent or other sums payable hereunder, including, but not limited to any ad valorem taxes, and sales or excise taxes on rent, and personal property taxes against tangible and intangible personal property of Tenant.

5. Use & Operation.

5.1 Permitted Use. Tenant shall use the Subleased Space solely for the operation of a Dunkin' franchise business and for no other purpose whatsoever.

5.2 Hours. Subject to Master Landlord approval, Tenant shall keep its business at the Subleased Space continuously open to the public at a minimum from 5:00 AM to 11:00 p.m. (contractually obligated to be min 18 hrs/day) seven (7) days per week, or at such other minimum hours as Landlord and Tenant may agree upon in writing. Tenant will have the option to operate a 24 hour operation at the drive thru window. Tenant may close the business on Thanksgiving, Christmas Day, for any period of refurbishment required under its franchise agreement, and for Force Majeure events.

5.3 Care. Tenant shall operate its business with reasonable care for the safety of persons and property and in compliance with all laws, rules, regulations, ordinances, and codes, and in compliance with reasonable requirements of the Landlord's and Master Landlord's insurance policies.

5.4 Master Lease Requirements. All terms, covenants and provisions of this Sublease shall at all times remain fully subject to and subordinate in all respects to the Master Lease between the Lee County Port Authority (the "Authority") and Landlord. If the Master Lease terminates, then this Sublease terminates, unless, only at the option

and request of the Authority, Tenant shall attorn to the Authority and recognize the Authority as Tenant's direct Landlord under this Sublease. Tenant shall execute and deliver, at any time and from time to time, upon the request of the Authority, any instrument necessary or appropriate to evidence such attornment. Tenant appoints the Authority as Tenant's attorney-in-fact, irrevocably, with full power of substitution, to exercise and deliver any such instrument. This appointment is coupled with an interest and is irrevocable. Tenant further acknowledges and agrees that it is herein bound by all use restrictions, limitations, conditions, prohibitions, and other requirements imposed under the Master Lease, except for those relating to ACDBE Participation Goals. Without limiting the generality of the foregoing:

(a) **Prohibitions.** Tenant shall not engage nor suffer to permit at the Subleased Space any activities, goods, or services that are prohibited under the Master Lease. Tenant may not provide for sale fountain soda, Take home beverages/dairy defined as above 21oz, tobacco products, alcoholic beverages, hot dogs/roller grill products, pizza, chicken wings, take home ready to eat meals.

(b) **Quality of Merchandise.** Tenant shall offer for sale only high-quality merchandise, which are safe, free of adulteration, sanitary and properly labeled. Upon written notice to Tenant of any violation of this provision, Tenant shall forthwith correct the condition objected to within fifteen (15) days after receipt of such notice.

(c) **Hours.** Tenant shall actively operate its business at the Subleased Space in a business-like manner and shall be open to serve the public seven (7) days per week (subject to Section 5.2), and a change in the hours of operation of such facilities described in Section 5.2 above shall be subject to the prior written approval of the Department, which shall not be unreasonably withheld. The hours of operation shall be such that substantially all arriving and departing passengers of the Airport will be accommodated.

(d) **Right to Object.** Master Landlord shall have the right to raise reasonable objections to the appearance or condition of the Sublease Space, the quality and quantity of merchandise, the character of the service, the hours of operation, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to the Department be remedied by Tenant in a commercially reasonable manner.

(e) **Nondiscriminatory.** Tenant shall provide all services to its customers upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; provided, however, that Tenant may make or give such reasonable and nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees, Airport employees, seniors and military personnel.

(f) **Type of Operation.** Tenant shall maintain and operate the Sublease Space in an orderly, proper, and first-class manner, which does not unreasonably annoy, disturb, or offend others at the Airport considering the nature of such operations.

(g) **Replacements & Refunds.** Tenant shall, without any additional charge to the purchaser, exchange any product determined by the purchaser to be unsatisfactory, flawed, defective, or of poor quality or shall provide a full refund of the purchase price.

(h) **Credit/Debit Cards.** Tenant shall accept as payment for goods and services at least three (3) nationally-recognized credit and debit cards, including at least two (2) of the following: VISA, Master Card, or American Express.

(i) **Services to the General Public.** Tenant shall, without charge, provide services such as making change, giving directions and general information to the public. Tenant shall strive to ensure that all of its employees know the layout of the Airport and have the ability to provide passengers and visitors with information regarding the locations of Airport services.

(j) **Personnel.** Tenant shall maintain a sufficient number of properly trained personnel to ensure all customers of Tenant receive prompt and courteous service at all times. All such personnel, while on or about the Subleased Space, shall be polite, clean, appropriately attired, and neat in appearance, and shall wear appropriate nametags, and personnel performing similar jobs shall have a similar dress code or wear similar uniforms, which shall be clean and pressed. Master Landlord shall have the right to object to the demeanor, conduct, and appearance of any

Tenant personnel, or any of its invitees or those doing business with it, whereupon Tenant shall take all commercially reasonable steps necessary to remedy the cause of the objection.

(k) **Rules & Regulations.** Tenant shall observe and obey, and require its officers, employees, guests, invitees and those doing business with it to observe and obey such rules and regulations of the Department and Master Landlord (including amendments and supplements thereto) regulating the conduct and operations of Tenant and others on the Subleased Space as may from time to time be promulgated. Tenant's obligation to require such observance and obedience on the part of its guests, invitees and visitors shall pertain only while such persons are on any portion of the Subleased Space.

(l) **Noise & Vibrations.** Tenant shall take all reasonable measures to: (i) reduce to a minimum, vibrations tending to damage any equipment, structure, building or portion of a building that is on the Subleased Space or is a part thereof, or is located elsewhere on the Airport; and (ii) keep the sound level of its operations as low as possible.

(m) **Regulation of Conduct.** Tenant shall control the conduct, demeanor and appearance of its employees, subtenants, invitees and others doing business at the Subleased Space.

(n) **Garbage & Debris.** Tenant shall be responsible for the provision of trash removal services for the Subleased Space at Tenant's expense and shall deposit trash, garbage and debris in appropriate containers for collection.

(o) **Cleanliness.** Tenant shall maintain the Subleased Space in a neat, orderly, sanitary, clean and presentable condition. Tenant shall keep the Subleased Space free of insects, rodents and other vermin and other pests. Tenant shall keep any areas used by Tenant for its garbage storage in a clean and orderly condition so as not to attract birds, rodents and other vermin and other pests, or create an offensive odor.

(p) **Nuisance, Waste, Injury.** Tenant shall not commit any nuisance, waste or injury on the Subleased Space and shall not do, or permit to be done, anything which may result in the creation, commission or maintenance of such nuisance, waste or injury on the Subleased Space.

(q) **Vapors, Fumes, Emissions.** Tenant shall not create, nor permit to be caused or created upon the Subleased Space any obnoxious odor, smoke, noxious gases or vapors; provided, however, that fumes resulting from the normal operations of properly certified and maintained trucks and other vehicles shall be excepted from this provision. Tenant shall ensure that emissions generated by any such trucks, and other vehicles shall comply with all provisions of applicable environmental emissions laws and regulations.

(r) **Utilities Systems.** Tenant shall not do or permit anything which may interfere with the effectiveness or accessibility of the utilities systems installed or located on or about the Subleased Space that are also used by other occupants, customers or users of the Airport.

(s) **Overloading.** Tenant shall not overload any floor or paved area on the Subleased Space and shall repair at its expense, any floor, including supporting members, and any paved area damaged by overloading.

(t) **Hazardous Conditions.** Tenant shall not do or permit to be done any act or thing upon the Subleased Space that will invalidate or conflict with any insurance policies covering the Premises or the Airport or that may constitute a hazardous condition that increases the risk normally attendant upon the operations permitted by this Sublease.

(u) **Flammable Liquids.** All flammable liquids that are kept or stored at the Subleased Space must at all times be handled, stored and used in accordance with all applicable Federal, State and local laws.

(v) **Fire Extinguishing System.** As often as reasonably required by the Department or any governmental authority having jurisdiction, Tenant shall conduct (and upon Landlord's request, allow Landlord to conduct) pressure, water flow, and other appropriate tests of the fire extinguishing system and apparatus maintained by Tenant.

(w) **Safety.** Tenant shall conduct its operations and activities in a safe manner, shall comply with all safety regulations of the Department and with safety standards imposed by applicable Federal, State and local laws and regulations and shall require the observance thereof by all employees, subtenants, contractors, business invitees and all other persons transacting business with or for Tenant resulting from, or in any way related to, the conduct of Tenant's business on the Subleased Space. Tenant shall procure and maintain such fire prevention and extinguishing devices as required by Master Landlord and by law and shall at all times be familiar and comply with the fire regulations and orders of County and the fire control agency with jurisdiction at the Airport, as same may now exist or hereafter come into being. Tenant hereby agrees that neither Tenant, nor any employee or contractor or any person working for or on behalf of Tenant, shall require any personnel engaged in the performance of Tenant's operations to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health or safety, as determined by standards adopted pursuant to the Occupational Safety and Health Act of 1970, as same may be amended from time to time, as well as all State and local laws, regulations, and orders relative to occupational safety and health.

6. Construction.

6.1 Landlord's Work. Tenant takes the Subleased Space "as-is," and Tenant will provide and install all the equipment, other interior contents, exterior façade, signage, and all other internal and exterior materials and work to create an 1,800+/- square foot prototypical Dunkin' fast food restaurant retail store in accordance with Dunkin' national program, all at Tenant's own expense.

6.2 Tenant's Work. All work on the Subleased Space other than Landlord's Work is to be done by Tenant at Tenant's expense ("Tenant's Work").

6.3 Submission Timing. The Parties shall cooperate in good faith so that, within ninety (90) days after the Master Landlord consents to this Sublease, the Parties will submit to the Master Landlord plans and specifications for all the construction to be done at the Subleased Space, and shall cooperate in dealing with any changes required by the Master Landlord. The Parties shall each diligently pursue all required applications for the construction permit(s) each is required to obtain. In addition to the Party's other rights and remedies, if a Party complies with its obligations hereunder but does not obtain its required construction permit(s) within twelve (12) months after the Effective Date, either Party may terminate this Sublease upon written notice to the other, such election to be made within fifteen (15) days after the end of such 12 month period.

6.4 Work Timing. At least thirty (30) days before Landlord's anticipated completion of Landlord's Work, Landlord will provide Tenant written notice setting forth the date Landlord's Work is anticipated to be substantially complete and, on the date Landlord's Work is substantially complete, Landlord shall deliver possession of the Subleased Space to Tenant ("Delivery Date").

6.5 Punch List. Tenant shall have thirty (30) days from the Delivery Date to provide Landlord with a list of any defective, incomplete or unsatisfactory items regarding Landlord's Work. Landlord shall cure the punchlist items within a reasonable amount of time, but with respect to any material items that would prevent Tenant from obtaining any necessary operating permit in any event before the Rent Start Date.

6.6 Quality & Compliance. All work, before or during the Term, shall be performed in a good, workmanlike and lien-free manner, in accordance with all applicable laws, rules, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990, as amended, and as otherwise required under the Master Lease and this Sublease.

6.7 Approvals. At no time, before or during the Term, shall Tenant do any construction work, whether to make any improvements, additions, alterations, refurbishments, or otherwise, nor erect or change any signage, except in compliance with the Master Lease and this Sublease, and with the written consent of the Master Landlord (which will be granted or withheld in accordance with the Master Lease) and of the Landlord (which will not be unreasonably withheld, conditioned or delayed). By its consent to this Sublease the Master Landlord acknowledges that routine maintenance and refurbishment will be required under Tenant's franchise agreement.

7. **Services.** Tenant shall arrange and pay for all natural gas, cold and hot water, electric, phone, waste removal, and other services for the Subleased Space. Utilities and trash removal will be separately metered and/or separately billed to Tenant. No failure, delay or interruption in supplying any services for any reason whatsoever shall be construed to be an eviction of Tenant, nor grounds for any diminution or abatement of rent nor grounds for any claim by Tenant for damages, excepting those delays caused by Landlord, in which case Rent shall reasonably abate.

8. **Maintenance of Subleased Space.**

(a) Landlord shall maintain in clean, safe, working order, first-class condition and repair or replacement, at Landlord's expense (without any pass-through to Tenant of such expense), the structural portions of the building and the Subleased Space, including the roof, exterior walls (including glass), foundation, flooring and floor support system (but not floor coverings), and the following up to their connections to the Subleased Space: utility facilities, equipment, lines and conduits and plumbing, sewer and drainage systems, and the sprinkler mains. Maintenance and repairs shall be in quality and class comparable to the original work.

(b) Other than the maintenance to be provided by Landlord as described immediately above, Tenant shall maintain in clean, safe, working order, first-class condition and repair or replacement, at Tenant's expense, the Subleased Space, including all improvements therein, and all utilities located within and exclusively serving the Subleased Space. In addition, Tenant shall maintain in clean, safe, working order, first-class condition and repair or replacement the glass at the Subleased Space (provided that Landlord will be responsible to replace any glass damaged by storm or other natural casualty) and the HVAC exclusively serving the Subleased Space. Maintenance, repairs, and replacement shall be in quality and class comparable to the original work. Without limiting the generality of the foregoing, Tenant shall refurbish the Subleased Space as often is as necessary to preserve the Subleased Space in first-class condition.

(c) Without limiting the generality of the foregoing, Tenant shall maintain in clean, safe, working order, first-class condition and repair or replacement, at Tenant's expense, all of Tenant's trade fixtures, equipment and personal property at the Subleased Space.

9. **Title to Improvements, Fixtures, Personal Property.**

9.1 **Improvements.** Tenant shall be deemed to be the owner of all Tenant Improvements (as defined herein below) constructed or placed upon the Subleased Space during the Term. Upon expiration or earlier termination of this Sublease, all such improvements constructed or placed upon the Subleased Space (excepting trade dress and trade fixtures) shall become the property of Master Landlord or Landlord, including every right, title, and interest therein, free and clear of any liens, mortgages, and other encumbrances. Upon the request of Master Landlord or Landlord, Tenant shall provide a bill of sale or other evidence of the transfer of ownership of the improvements, together with evidence satisfactory to Master Landlord or Landlord that the improvements are free from liens, mortgages and other encumbrances. "Tenant Improvements" shall mean all construction work, if any, conducted by Tenant with respect to floor and wall finishes, general lighting, counters and back-counters, cabinetry and related millwork, dedicated rooftop HVAC system and distribution of all necessary electrical, water and drainage systems within the Subleased Space,

9.2 **Removal of Improvements.** Notwithstanding any provision of this Sublease to the contrary, Master Landlord or Landlord shall be entitled, at its option, to have the Subleased Space returned free and clear of some or all of the Tenant Improvements, at Tenant's expense. In such event, Tenant shall receive timely notification of such election to require removal of such improvements and, to the extent possible, Tenant shall receive such notice at least sixty (60) days prior to the expiration or earlier termination of this Sublease. Tenant shall have sixty (60) days from date of notice to remove such improvements. If Tenant fails to remove such improvements, Landlord or Master Landlord may remove such improvements, and Tenant shall be liable to the costs thereof, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall be due and payable by Tenant as Additional Rent (defined below) within thirty (30) days from demand therefor.

9.3 **Trade Fixtures & Personal Property.** Trade fixtures, trade dress, equipment and personal property brought by the Tenant to the Subleased Space shall remain the property of Tenant and, upon the expiration or

termination of this Sublease, Tenant shall have the right to remove the same during or within the thirty (30) days following the expiration or termination of this Sublease; provided that Tenant shall not remove any restrooms, flooring, ceilings, electrical, plumbing, or HVAC systems. All utility systems will be capped and returned to a condition compatible with code requirements. Any removal of Tenant trade fixtures, trade dress, equipment and personal property by Tenant shall be conducted in a good and workmanlike manner, and Tenant shall promptly repair any damage to the Subleased Space or the Airport Travel Center in connection with such removal. Any Tenant trade fixtures, trade dress, equipment and personal property not removed prior to thirty (30) days following the expiration or termination of this Sublease shall become the absolute property of Master Landlord or Landlord, including every right, title, and interest therein, free and clear of any liens, mortgages, and other encumbrances, except for any purchase money liens. Upon the request of Master Landlord or Landlord, Tenant shall provide a bill of sale or other evidence of the transfer of ownership of the improvements, together with evidence satisfactory to Master Landlord or Landlord that the improvements are free from liens, mortgages and other encumbrances, except for any purchase money liens.

10. Common Area.

(a) **Maintenance.** Landlord shall maintain Common Area in clean, safe, working order, first-class condition and repair or replacement. "Common Area" means parking areas, landscaped areas, streets, sidewalks, roads, driveways, exits, roofs, entrances, any restroom located in common area, common hallways, and other areas or improvements provided by Landlord for common use or benefit of tenants and/or their customers at Airport Travel Center.

(b) **CAM Charge.** Tenant shall pay Landlord an amount ("CAM Charge") equal to: (i) Common Area Costs, divided by (ii) total building area, multiplied by (iii) area of the Subleased Space (not including the drive thru facility area). This CAM Charge is anticipated to come out to approximately thirty-two (34.72%) percent of the Common Area Costs, but the actual percentage will be determined and used. "Common Area Costs" means costs incurred by Landlord in connection with the ownership, operation, and maintenance of the Common Area, including, but not limited to, janitorial services; general maintenance; insurance, taxes, assessments, and other governmental charges or fees (on the entire Premises); security; repairing, repainting and restriping the parking area, including, but not limited to, repaving and/or putting a new coat thereon; landscaping; repairing or replacing directional signs and other markers and lighting; repairing or replacing the roof. No water or electrical charges shall be included in CAM Charges as Tenant will pay its own metered charges with respect to same. Common Area Costs will be passed through with no mark up or additional fees. Landlord will provide Tenant with a breakdown of expenses on an annual basis within 60 days following the end of each Lease Year and Tenant shall have the right to verify such expenses and cause same to be audited or verified by a third party. Notwithstanding anything in this Sublease to the contrary, Landlord agrees that there will be no CAM Charge to Tenant for any period prior to the Rent Start Date.

(c) **CAM Charge Payments.** Landlord shall make a good faith estimate of the CAM Charge to be paid by Tenant for any full or partial calendar year. During each such year, Tenant shall pay Landlord, on the first of every month (i.e., concurrently with each MAG Payment), an amount equal to one twelfth (1/12th) of the estimated CAM Charge for such year. From time to time, Landlord may re-estimate the CAM Charge to be due from Tenant and deliver a copy of the re-estimate to Tenant. Thereafter, the monthly installments of CAM Charge payable by Tenant shall be appropriately adjusted in accordance with the re-estimate so that, by the end of the year, Tenant shall have paid all of the CAM Charge as estimated by Landlord. Any such estimated amounts paid shall be subject to adjustment when the calculation of the actual Common Area Costs are available for such year. Tenant shall pay any underage amount of CAM Charge so established for each year upon Landlord's notification to Tenant of such adjustment. Any overpayment by Tenant shall be credited towards Tenant's subsequent Rent payments (and any remaining balance of any such overpayment shall be paid to Tenant at the expiration or termination of the Term).

11. Damage to Subleased Space.

(a) **Notice.** Tenant shall give Landlord prompt written notice of any damage caused by accident, fire, the elements, or other casualty occurring on or to the Subleased Space, but not other portions of the Airport Travel Center.

(b) **Debris.** Tenant shall promptly remove all debris from the Subleased Space, and shall promptly take all necessary actions to place the Subleased Space in a neat and orderly condition to ensure the safety of persons

entering upon the Subleased Space. If Tenant fails to do so, Master Landlord or Landlord may take such actions as it deems necessary to render the Subleased Space in a neat, orderly, and safe condition, and Tenant shall be liable for the costs thereof, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall be due and payable by Tenant as Additional Rent within thirty (30) days from demand therefor.

(c) **Restoration.** Tenant assumes full responsibility for the interior condition of the Subleased Space and the character, acts and conduct of all persons admitted to the Subleased Space by or with the actual or constructive consent of Tenant or with the consent of any person acting for or on behalf of Tenant. If the Subleased Space is damaged in any way whatsoever, whether by an act of God or by the act, default or negligence of Tenant, or Tenant's agents, employees, officers, representatives, guests, invitees, contractors, patrons or any person admitted to the Subleased Space by Tenant or otherwise, Tenant shall, at its expense, restore the interior of the Subleased Space to the condition existing prior to such damage. Tenant shall commence restoration within sixty (60) days after any such damage and shall diligently pursue such restoration to completion in accordance with the construction requirements of this Sublease and of the Master Lease. If Tenant fails to restore the Subleased Space as required hereunder, the Landlord or the Master Landlord may enter the Subleased Space and perform the restoration, and Tenant shall be liable to the costs thereof, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall be due and payable by Tenant as Additional Rent within thirty (30) days from demand therefor.

(d) **Insurance Proceeds.** Insurance proceeds shall be disbursed during construction to pay the cost of such work. If the amount of the insurance proceeds is insufficient to pay the costs of the required repair, replacement or rebuilding, Tenant shall pay any additional sums required to complete the required repair, replacement or rebuilding into the escrow account. If the amount of the insurance proceeds is in excess of the costs of the required repair, replacement or rebuilding, the excess amount shall be remitted to Tenant.

(e) **Damages to Travel Center and Rent Abatement.** If a portion of the Airport Travel Center is damaged by a casualty event Tenant shall have no obligation to effect repairs otherwise required under Section 11(c) above, unless Landlord agrees to cause the entire Air Travel Center to be restored. If Landlord fails to fully repair, restore and reopen the Airport Travel Center within six (6) months following the casualty event, then Tenant shall have the right to terminate this Sublease upon written notice delivered to Landlord within ten (10) days after the end of the six month period. The requirement to make CAM Charges shall abate commencing on the date of the occurrence of a casualty event that requires Tenant to cease operations and shall resume upon reopening. The requirement to make MAG Payments shall continue for the first six months following the occurrence of a casualty event, unless this Sublease is terminated by either party as a result of such casualty event. After such six month period, the requirement to pay MAG Payments shall abate until operations resume hereunder.

12. **Airport Security.**

(a) Tenant shall observe all security requirements and other requirements of the FAA, TSA, County and Department applicable to Tenant operations, as now or hereafter amended, including, but not limited to, Title 49, Parts 1500 et al., of the Code of Federal Regulations, to the extent applicable to Tenant and Tenant's activities hereunder.

(b) Tenant acknowledges that Tenant and its employees, contractors and agents may be subject to federal and state criminal history record check requirements under Federal, State and/or local laws, as may now exist or as may hereafter be enacted, including, but not limited to the Palm Beach County Criminal History Record Check Ordinance (Ordinance No. 2003-030), which laws may require Tenant to remove or restrict access of individuals who are not in compliance with the requirements of such laws. Tenant shall comply with and require its employees, contractors and agents to comply with all Federal, State and local criminal history record check requirements, including, but not limited to, the Palm Beach County Criminal History Record Check Ordinance and any access restrictions imposed thereunder. Tenant acknowledges that its employees, contractors and agents, who will have access to a "critical facility" (as defined in the Palm Beach County Criminal History Record Check Ordinance), will be subject to a national and state fingerprint based criminal history records check. Tenant shall be solely responsible for the financial, scheduling and staffing implications associated with complying with the Palm Beach County Criminal History Record Check Ordinance.

(c) Tenant shall rectify any security deficiency or other deficiency that may be determined as such by the Department, County, FAA or TSA. If Tenant fails to remedy any such deficiency, County may do so at Tenant's expense. Tenant acknowledges that County shall have the right to take whatever action is necessary to rectify any security deficiency or other deficiency as may be determined by the Department, County, FAA or TSA.

13. Insurance.

13.1 Landlord. From the Delivery Date and continuing throughout the Term, Landlord shall, at its expense, maintain in effect the insurance coverages, limits, and endorsements as required under the Master Lease. Landlord acknowledges that such insurance requirements shall not in any manner limit or qualify Landlord's obligations or liabilities under this Sublease.

13.2 Tenant. From the Delivery Date and continuing throughout the Term, Tenant shall, at its expense, maintain in effect at all times during the Term, the following insurance coverages, limits, and endorsements (all coverage shall be provided on a primary basis):

(a) Commercial General Liability insurance of at least two million (\$2,000,000) per occurrence, including coverage for, but not limited to, property damage, premises (including damage to rented premises), products and completed operations, contractual liability, personal injury, and death. One Million Dollars (\$1,000,000) of the coverage maybe in the form of Umbrella Liability Policy.

(b) Worker's Compensation & Employers Liability in the amounts of at least \$500,000 / \$500,000 / \$500,000 or minimum per applicable law

(c) Business Automobile Liability Insurance of at least two million (\$2,000,000) dollars each occurrence for owned, non-owned and hired automobiles used primarily for and directly in connection with the Dunkin' operating in and about the Subleased Space, on ISO form CA 00 01, CA 00 12, or CA 00 20 (or any equivalent of the foregoing forms); provided, however, such insurance shall not be required if Tenant's business does not own or operate any automobiles

(d) Business Interruption Insurance for 6 months coverage including rent

(e) During construction, Tenant shall maintain Builder's Risk insurance covering Tenant's Improvements during the course of construction at the Subleased Space in an amount at least equal to 100% of the estimated completed project value as well as subsequent modifications of that sum. Coverage shall be provided on an All-Risk basis including coverage for the perils of wind and flood. After construction is complete, Tenant shall maintain:

Property insurance of at least one hundred (100%) percent of the total replacement cost of Tenant's Improvements (as well as Tenant's contents located on the Subleased Space. The settlement clause shall be on a Replacement Cost basis. Coverage shall be written with a Special - Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than twenty-five (25%) percent of the Property insurance limit.

Flood insurance, regardless of the flood zone, of at least one hundred (100%) percent of the total replacement cost of Tenant's Improvements, as well as Tenant's contents, located on the Subleased Space, or the maximum amount available from the NFIP.

Windstorm insurance, unless included as a covered peril in the property insurance, of at least one hundred (100%) percent of the total replacement cost of the Tenant's Improvements, as well as Tenant's contents, located on the Subleased Space, or the maximum amount available under the Florida Windstorm Underwriting Association.

(f) Tenant may satisfy the minimum limits required above for Commercial General Liability and/or Business Auto Liability coverage under Umbrella or Excess Liability Insurance with an aggregate limit of at least the

highest “each occurrence” limit for the Commercial General Liability and/or Business Auto Liability. Landlord and Master Landlord shall be endorsed as an “Additional Insured” on the Umbrella or Excess Liability policy, unless the Certificate of Insurance notes the Umbrella or Excess Liability policy provides coverage on a “Follow-Form” basis.

13.3 Additional Insured Endorsement. Tenant shall endorse Landlord and Master Landlord as an “Additional Insured” with respect to the actions and omissions of Tenant on each liability policy required to be maintained by Tenant, except for Worker’s Compensation and Business Auto Liability policies. The “CG 2011 Additional Insured - Managers or Lessors of Subleased Space,” or its equivalent, shall be an endorsement to the Commercial General Liability policy. Other policies, when required, shall provide a standard “Additional Insured” endorsement offered by the insurer. The “Additional Insured” endorsements shall provide coverage on a primary basis.

13.4 Intentionally Deleted

13.5 Certificates of Insurance. Upon request at any time(s), Tenant shall provide Landlord or Master Landlord certificates of insurance evidencing coverages, limits and endorsements required herein. The certificates shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. If coverage is cancelled or is not renewed, Tenant shall provide Landlord new certificates of insurance evidencing replacement coverage no later than thirty (30) days prior to the expiration or cancellation of the coverage. Failure to provide certificates of insurance in compliance shall not relieve Tenant of its obligations to carry such insurance. All insurance shall carry a Best’s Rating of “A-” or better. These insurance requirements shall not in any manner limit or qualify Tenant’s obligations or liabilities under this Sublease.

13.6 Waiver of Subrogation. Tenant agrees to a Waiver of Subrogation for each required casualty policy. When required by the insurer, or if a policy condition does not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, Tenant shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. The requirements of this paragraph shall not apply to any policy, a condition to which the policy specifically prohibits such an endorsement, or voids coverage if Tenant enters into such an agreement on a pre-loss basis.

13.7 Insurance Violation or Increase. Tenant shall not conduct any activity or place any item in or about the Subleased Space or Airport Travel Center that violates the requirements of any insurance owned by Tenant, Landlord, or Master Landlord covering the Subleased Space or Airport Travel Center, or that increases the rate of any insurance maintained by Landlord or Master Landlord. If any increase in such rate of insurance maintained by Landlord or Master Landlord is due to any such activity by, or item placed by, Tenant (whether or not Landlord has consented to such activity or item), Tenant shall pay such increase. The statement of any insurance company or insurance rating or similar organization that such an increase is due to any such activity by, or item placed by, Tenant shall be conclusive evidence thereof.

13.8 Premiums & Proceeds. Tenant shall be responsible for all premiums, including any increases, for all required insurance. Tenant agrees that all property, flood and windstorm insurance proceeds shall be made available for use to promptly replace, repair or rebuild the Subleased Space, including, but not limited to, those made by or on behalf of Tenant.

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

13.10 Right to Review or Adjust. The Risk Management Department may review, modify, reject or accept any required policies of insurance, including, but not limited to, coverages, limits, or endorsements, required hereunder from time to time. Master Landlord may also reject any insurer or self-insurance plan providing coverage because of poor financial condition or failure to operate legally. In such event, Master Landlord shall provide Tenant a written notice of rejection, and Tenant shall comply within thirty (30) days of receipt thereof.

13.11 No Representation of Adequacy. Tenant agrees that it will not rely upon the requirements herein when assessing the extent or determining appropriate types or limits of insurance coverage to protect Tenant against any loss exposures.

14. Assignment & Subletting.

(a) Tenant shall not, in any manner, assign, transfer or otherwise convey any interest in part or all of this Sublease, the Subleased Space or any portion thereof (collectively, "Assignment"), without the prior written consent of Master Landlord and Landlord, which consents shall not be unreasonably withheld, conditioned or delayed. Tenant must provide evidence establishing that the proposed assignee: (i) has the ability to make the Rent payments under this Sublease; (ii) has sufficient experience to operate the facilities constructed or to be constructed on the Subleased Space in the manner required hereunder; (iii) has the ability to otherwise perform all of the terms, conditions and covenants of this Sublease; and (iv) agrees to assume all obligations, responsibilities and liabilities of Tenant arising on and after the effective date of the Assignment. If Master Landlord and Landlord consent in writing to an Assignment, Tenant shall have the right to assign this Sublease to the extent permitted by such consents, provided that the use of the Subleased Space shall be limited to the same uses as are permitted under this Sublease and the assignee shall otherwise remain subject to this Sublease in all respects.

(b) Tenant may sublease the Subleased Space subject to the prior written consent of the Master Landlord and the Landlord, which consents shall not be unreasonably withheld. All subleases shall be subject to the same conditions, obligations, and terms as set forth herein and Tenant shall be fully responsible for subtenant's performance of this Sublease. No subletting will operate to terminate or otherwise change any aspect of any guaranty.

(c) Notwithstanding any provision of this Sublease to the contrary, the consent of Master Landlord shall not be required for an Assignment of this Sublease in its entirety where all or substantially all of the assets of Tenant are acquired by another entity by reason of a merger acquisition, or other business reorganization, provided Tenant provides written notice to Master Landlord and Landlord ten (10) days prior to the change in ownership; provided, however, that Landlord's prior written consent shall be required, which consent shall not be unreasonably withheld, conditioned or delayed. No Assignment will operate to terminate or otherwise change any aspect of any guaranty.

(d) Any attempted Assignment or subleasing without the consent(s) required herein shall be null and void.

(e) Landlord may freely assign this Sublease at any time without Tenant's consent, and upon assumption by such assignee of Landlord's obligations hereunder, Landlord shall be released from all liability and obligation hereunder upon such assignment.

15. Eminent Domain. If any or all of the Subleased Space is taken through eminent domain or condemnation, or a transfer in lieu thereof, Tenant may terminate this Sublease if the taking renders the Subleased Space unsuitable for Tenant's use. Election shall be made within thirty (30) days after such taking. All awards, damages and compensation paid on account of such condemnation shall belong to Landlord or Master Landlord. Tenant waives all rights thereto. Tenant shall not make any claim against Landlord, Master Landlord, or condemnor for any portion thereof, the value of the unexpired portion of the Term, lost profits or goodwill, or severance damages. The foregoing shall not, however, prevent Tenant from pursuing a separate claim against the condemnor for the value of Tenant's Improvements and relocation expenses.

16. Encumbrances. Except as otherwise provided for herein, Tenant shall not, in any manner, mortgage, pledge or otherwise encumber this Sublease, the Subleased Space or any improvements now existing or hereinafter erected or constructed upon the Subleased Space, without written consent of the Master Landlord (which will be granted or withheld in accordance with the Master Lease) and of the Landlord (which will not be unreasonably withheld). Any such encumbrance without such consent shall be null and void. Tenant shall cause to be removed any and all liens of any nature arising out of or resulting out of or resulting from the performance of any work or labor performed upon the Subleased Space or the furnishing of any materials for use upon the Subleased Space, by, on behalf of or at the direction of Tenant, its employees, agents, contractors or subcontractors. This provision shall be construed to include a prohibition against any mortgage, pledge, or encumbrance by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

17. Inspections. Landlord, Master Landlord, the Department, and any Federal, State or local governmental entity having jurisdiction over Tenant's operations or activities on the Subleased Space shall have the

right to enter the Subleased Space at all reasonable times to determine whether Tenant is in compliance with this Sublease (including, but not limited to, in compliance with all applicable law) and whether Landlord is in compliance with the Master Lease. If Tenant is notified in writing that it is not in compliance with this Sublease, as reasonably determined by Landlord, Master Landlord, or the Department, Tenant shall immediately initiate, and diligently pursue to completion, a remedy of such noncompliance to the reasonable satisfaction of the Landlord, Master Landlord, or the Department, as the case may be. If corrective action is not immediately initiated and pursued in a diligent manner to completion, the Landlord, Master Landlord, or the Department may cause the same to be accomplished, and Tenant shall be liable for the costs thereof, plus a twenty-five percent (25%) administrative overhead fee, which costs and administrative overhead fee shall be due and payable by Tenant as Additional Rent within thirty (30) days from demand therefor.

18. Non-Discrimination. Tenant shall comply with all the Master Lease provisions regarding non-discrimination.

19. Environmental. Tenant shall comply with all provisions of the Master Lease regarding environmental hazards used by Tenant at the Subleased Space, including, but not limited to, the obligation to immediately notify the emergency coordinator of the Department's Risk Management Department, Safety Division, and Landlord, and all appropriate governmental entities having jurisdiction thereof, in case of any spill, leak, or other emergency situation involving hazardous, toxic, flammable, and/or other pollutant/contaminated materials.

20. Limitation of Liability. THE PARTIES EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES WHATSOEVER WILL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS, WHETHER OR NOT FORESEEABLE. TENANT ALSO ACKNOWLEDGES AND AGREES TO BE BOUND BY, WITH RESPECT TO THE MASTER LANDLORD, ALL LIMITATIONS OF LIABILITY CONTAINED IN THE MASTER LEASE.

21. Indemnification.

(a) Tenant shall protect, defend, reimburse, indemnify and hold Master Landlord and Landlord, their agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which Master Landlord or Landlord is named or joined, arising out of this Sublease or Tenant's use or occupancy of the Subleased Space, including, without limitation, those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Tenant's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Tenant or any breach of the terms of this Sublease; provided, however, Tenant shall not be responsible to Master Landlord or Landlord for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the negligence of Master Landlord or which are judicially determined to be attributable to the negligence or intentional wrongdoing of Landlord, respectively, their respective agents, servants, employees and officers.

(b) Tenant further agrees to hold harmless and indemnify Master Landlord and Landlord for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Tenant's activities or operations or use of the Subleased Space whether or not Tenant was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities.

(c) The above indemnification by Tenant shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Tenant. Tenant recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that Landlord would not enter into this Sublease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of ten (\$10.00) dollars and such other good and valuable consideration provided by Landlord in support of this

indemnification in accordance with the laws of the State of Florida.

Landlord shall protect, defend, reimburse, indemnify and hold Tenant, its agents, and employees, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including attorney fees at trial and appellate levels) and causes of action of every kind and character against, or in which Tenant is named or joined, arising out of Landlord's use or occupancy of the Airport Travel Center, including, without limitation, those arising by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Landlord's acts, omissions or operations hereunder, or the performance, non-performance or purported performance of Landlord or any breach of the terms of this Sublease by Landlord; provided, however, Landlord shall not be responsible to Tenant for damages resulting out of bodily injury (including death) or damages to property which are judicially determined to be solely attributable to the negligence of Tenant, its agents, servants, employees and officers.

(e) Landlord further agrees to hold harmless and indemnify Tenant for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from or in any way arising out of or due to Landlord's activities or operations or use of the Airport Travel Center (including, but not limited to any discharge of gasoline, other petroleum products, or other hazardous materials on or about the Airport Travel Center by Landlord, its employees, agents, or customers) whether or not Landlord was negligent or even knowledgeable of any events precipitating a claim or judgment arising as a result of any situation involving the activities.

(f) The above indemnification by Landlord shall be extended to include all deliverers, suppliers, furnishers of material, or anyone acting for, on behalf of or at the request of Landlord. Landlord recognizes the broad nature of this indemnification and hold-harmless provision, and acknowledges that Tenant would not enter into this Sublease without the inclusion of such clause, and voluntarily makes this covenant and expressly acknowledges the receipt of ten (\$10.00) dollars and such other good and valuable consideration provided by Tenant in support of this indemnification in accordance with the laws of the State of Florida.

22. Expiration & Termination.

22.1 Expiration. This Sublease shall automatically terminate at the end of the Term.

22.2 Tenant Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Sublease by Tenant ("Event of Default"):

- (a) Tenant's vacating or abandonment of the Subleased Space.
- (b) Tenant's failure to pay Rent or any other amount payable by Tenant hereunder, as and when due, where such failure continues for five (5) days after written notice thereof is sent by Landlord to Tenant.
- (c) Tenant's breach of any provision of this Sublease, where such breach is not cured within thirty (30) days after written notice thereof is sent by Landlord or Master Landlord to Tenant (or within any shorter cure period that may be set forth in another section of this Sublease); provided, however, that if the nature of the breach is such that more than thirty (30) days is reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences to cure within such 30 day period and thereafter diligently pursues such cure to completion.
- (d) To the extent permitted by law: (i) the making by Tenant or any guarantor thereof of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy, unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Subleased Space or of Tenant's interest in this Sublease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Subleased Space or of Tenant's interest in this Sublease, where such seizure is not discharged within thirty (30) days.

(e) Notwithstanding any provision of this Sublease, Tenant acknowledges and agrees that the Department may require Tenant to immediately cease any activity which could result in an airport hazard or endanger safety of any other Airport user, as reasonably determined by the Department.

22.3 Remedies for Tenant Default. Upon the occurrence of an Event of Default, Landlord may, at any time thereafter, with or without notice or demand and without limiting any other right or remedy, exercise any of the following remedies (together with recovery of all costs of enforcement, including, but not limited to, attorneys fees):

(a) Declare the entire rent for the balance of the Term or any part thereof due and payable forthwith (discounted for present value and less the reasonable net value of rents to be received from a successor), and bring an action for the recovery thereof; provided that Landlord shall use all reasonable commercial efforts to mitigate its damages by first reletting the Subleased Space.

(b) Terminate Tenant's right to possession of the Subleased Space by any lawful means and re-enter and re-take possession of the Subleased Space for the account of Tenant, in which case the rent and other sums hereunder shall be accelerated and due in full, and Tenant shall be liable for the difference between the rent which is stipulated to be paid hereunder plus other sums as described herein and what Landlord is able to recover from its good faith efforts to relet the Subleased Space, which deficiency shall be paid by Tenant. Upon such reletting, all rentals received by Landlord shall be applied, first to the payment of any indebtedness, other than rent due hereunder from Tenant; second, to the payment of any reasonable costs and expenses of such reletting, which shall include all damages incurred by Landlord due to Tenant's default including, but not limited to, the reasonable cost of recovering possession of the Subleased Space including reasonable attorneys' fees, and reasonable real estate commissions paid by Landlord relating to the unexpired Term; third, to the payment of Rent due and unpaid hereunder; and the remainder, if any, shall be paid to Tenant.

(c) Treat this Sublease as terminated and re-enter and re-take possession of the Subleased Space for the account of Landlord, thereby terminating any further liability under this Sublease on the part of Tenant and Landlord. Notwithstanding the foregoing, Landlord shall have a cause of action to recover any Rent remaining unpaid when Landlord retakes possession.

(d) Stand by and do nothing, holding Tenant liable for the rent as it comes due.

(e) Pursue any other remedy now or hereinafter available.

(f) Notwithstanding anything in this Sublease to the contrary, Landlord shall have the right to bring an action for its damages upon the occurrence of a default by Tenant and Landlord reserves all rights which laws of the State of Florida confer upon a Landlord against a tenant in default. Tenant hereby waives any additional notice Tenant may be entitled to pursuant to Florida law.

22.4 Termination by Tenant. Tenant may terminate this Sublease, if Tenant is not in default of this Sublease, by giving Landlord sixty (60) days written notice, upon or after the occurrence of any one of the following events (such remedies to be in addition to any other remedies available to Tenant):

(a) The issuance by any court of competent jurisdiction of an injunction in any way preventing the use of the Airport for Airport purposes or a substantial part of the Subleased Space for the purposes permitted hereunder, which injunction remains in force for a period of at least ninety (90) days.

(b) Landlord's breach of this Sublease, where such breach is not cured within thirty (30) days after written notice thereof is sent by Tenant to Landlord; provided, however, that if the nature of the breach is such that more than thirty (30) days is reasonably required for its cure, then Landlord shall not be deemed to be in default if Landlord commences to cure within such 30 day period and thereafter diligently pursues such cure to completion.

(c) The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such a manner as to substantially restrict the operation of Tenant, for a period of at least ninety (90) days.

(d) In addition Tenant shall have the right to terminate this Lease in all respects if the landlord has not completed construction of the Airport Travel Center and Delivery Date has not occurred by June 30, 2022 by providing the Landlord with written notice of its election to terminate. Upon termination hereunder Landlord shall return the First & Last Payment to Tenant and both parties shall be released and relieved of any further obligations under this Sublease.

22.5 Surrender. Tenant shall immediately surrender the Subleased Space to Landlord in good condition, upon expiration or termination of this Sublease, ordinary wear excepted. If Tenant fails to surrender the Subleased Space, Tenant shall be liable to Landlord for any damages, and in addition thereto, Tenant shall also be liable to pay Landlord during such holdover, double rental, as provided in Florida Statutes Section 83.06.

23. General Provisions.

23.1 Brokers. Each Party represents and warrants to the other Party that no brokerage commission is due to any person or entity with respect to this Sublease, and each Party shall indemnify, defend and hold the other harmless from and against any cost or liability suffered in connection with any real estate broker(s) claiming by, through or under either Party seeking any commission, fee or payment in connection with this Sublease, including, but not limited to, reasonable attorneys' fees.

23.2 No Recording. Neither this Sublease, nor any memorandum or short form hereof, shall be recorded without the prior written consent of the Department.

23.3 Estoppel Certificate. From time to time, upon not less than ten (10) days written request from the other Party, each Party shall execute, acknowledge and deliver to the requesting Party, in form and content reasonably acceptable to the requesting Party, an estoppel certificate. If either Party fails to execute and deliver any such certificate within the foregoing time period, the delinquent Party shall be deemed to have acknowledged and agreed with and to the matters set forth in such certificate.

23.4 Authority. Each Party represents and warrants that: (i) such Party has full capacity, right, power and authority to execute, deliver, and perform this Sublease, (ii) all document, and that all required action and approvals therefor by such Party have been duly taken and obtained, (iii) this Sublease and all documents to be executed pursuant hereto are binding upon and enforceable against such Party in accordance with their terms, (iv) the transaction contemplated hereby will not result in a breach of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, or other agreement to which such Party is bound, and (v) the individual signing this Sublease and all other documents executed pursuant hereto on behalf of such Party is duly authorized to sign this Sublease on behalf of such Party (the individual signing this Sublease on behalf of such Party also represents and warrants that he or she is duly authorized to sign this Sublease on behalf of such Party).

23.5 Independent Contractor. Tenant is and shall be deemed to be an independent contractor and operator responsible to all parties for its acts or omissions, and neither Landlord nor Master Landlord shall be responsible therefor.

23.6 Rights Reserved. All rights not expressly granted Tenant by this Sublease are reserved to the Landlord and the Master Landlord.

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

Landlord:

Fort Myers Airport Plaza, LLC
c/o Petroleum Marketing Group Inc.
2900 Telestar Court
Falls Church, VA 22042
Attn: Keyhan Ejtemai

Tenant:

_____, LLC
6685 Collier Blvd.
Naples, FL 34114

Attn: Michael Koroghlian

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

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

23.9 Scrutinized Companies. As provided in Florida Statutes Section 287.135, by entering into this Sublease or performing any work in furtherance hereof, Tenant certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Florida Statutes Section 215.473. If County determines, using credible information available to the public, that a false certification has been submitted by Tenant, this Sublease may be terminated and a civil penalty equal to the greater of \$2 Million or twice the amount of this Sublease shall be imposed, pursuant to Florida Statutes Section 287.135.

23.10 Laws. Tenant shall comply with all applicable Federal, State and local laws, statutes, regulations, rules, rulings, orders, ordinances and directives of any kind or nature without limitation, as now or hereafter amended, including, but not limited to, FAA Advisory Circulars and Airport Rules and Regulations, and permitting and licensing requirements.

23.11 Intentionally deleted.

23.12 Additional Rent. Any and all sums of money, fees, or charges required to be paid by Tenant hereunder other than Rent shall be considered "Additional Rent" (whether or not specifically so designated) and Landlord shall have the same rights and remedies regarding Additional Rent as are available regarding Rent.

23.13 Accord & Satisfaction. If Tenant pays any amount that is less than the amount stipulated to be paid under this Sublease, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance due or to pursue any other remedy.

23.14 Entire Agreement. This Sublease sets forth the entire agreement between the Parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Sublease may be added to, modified, superseded or otherwise altered or waived, nor may any breach be waived, except by written instrument executed by the Parties hereto.

23.15 Waiver. The failure of either Party or of the Master Landlord to insist on strict performance of any of the agreements, terms, covenants or conditions hereof or of the Master Lease (whether single or through a course

of dealing or otherwise) shall not be deemed a waiver of those or any other agreements, terms, covenants or conditions, nor a waiver of any rights or remedies whatsoever.

23.16 Governing Law & Interpretation. This Sublease shall be governed by and in accordance with the laws of the State of Florida. No Party shall be considered the author of this Sublease. This Sublease shall be considered as jointly drafted and it shall not be construed against one party as opposed to the other party based upon who drafted it. The invalidity of any part of this Sublease shall have no effect upon the validity of any other part. Except as otherwise expressly provided, no provision of this Sublease shall create any third party beneficiary nor provide any rights to any person or entity not a Party to this Sublease, except such rights as are held by the Master Landlord or any other governmental entity under this Sublease, the Master Lease, or any applicable law. Time is of the essence with respect to the performance of every provision of this Sublease in which time of performance is a factor. The recitals are incorporated into and made part of this Sublease. All references to “months” or “days” mean calendar months or calendar days, respectively.

23.17 Litigation. Venue in any action, suit or proceeding in connection with this Sublease shall be filed and held in a State court of competent jurisdiction located in Palm Beach County, Florida, and the Parties hereby waive any and all rights to have a trial by jury in any such litigation; provided that such waiver shall not apply if any persons or entities other than the Parties are party to the litigation.

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

23.19 Binding Effect. This Sublease shall inure to the benefit of and be binding upon the Parties hereto and their successors, assigns and subtenants, if any. This provision shall not constitute a waiver of any prohibition against or limitations regarding assignment or subletting.

23.20 Survival. The provisions of this Sublease shall survive any expiration or termination of this Sublease as the context may naturally dictate.

23.21 Force Majeure. If either Party is prevented from performing any of its non-monetary obligations due to strikes, lockouts, terrorism, failure of power, riots, insurrection, war, embargo, acts of God, or other causes beyond such Party’s reasonable control, such Party’s performance obligation shall be suspended during such prevention, so long as such Party diligently works to perform to the extent reasonably possible.

23.22 Assurances. Upon written request, Tenant shall promptly provide Landlord or Master Landlord such evidence, documentation, or information as may reasonably be requested to assure Landlord or Master Landlord that Tenant is in compliance with this Sublease.

23.23 Counterparts. This Sublease may be executed in counterparts. Signatures transmitted by facsimile or other electronic means (e.g., emailed pdf) shall be deemed to be originals, and true copies shall be as valid as originals.

23.24 Radon. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County’s public health unit.

23.25 Option to Assume. Attached hereto is the Option of Assume Lease v.03-2020 (required by Tenant’s Franchisor) which is incorporated herein by reference.

23.26 Miscellaneous.

- (a) If at any time during the Term, Tenant’s lender or equipment lessor require(s) a landlord’s waiver of lien or a subordination of landlord’s lien (statutory and otherwise) as to any or all of Tenant’s

equipment, fixtures and personal property located at the Subleased Space, Landlord agrees to, promptly upon request, execute and furnish to Tenant's lender or equipment lessor, as applicable, such waiver of lien or subordination agreement as requested by such Tenant's lender and/or equipment lessor.

- (b)
- (c) Landlord hereby approves Dunkin' trademark signage (including as to color, logo, font, size and type of sign) on the interior and exterior of the Subleased Space and on any monument and/or pylon signs at the Airport Travel Center, so long as they comply with all applicable governmental requirements. During the Term Tenant shall be entitled to place a sign on the panel(s) where Wendy's currently has its panels on the monument sign at Airport Travel Center.
- (d) Landlord represents that there are no recorded or unrecorded covenants or restrictions which prevent the use of the Subleased Space for Tenant's intended purposes, and that when the Subleased Space is delivered to Tenant they shall be free and clear of all tenancies, liens, open or expired permits and cited building or code violations.
- (e) Tenant's obligations under this Sublease shall be subject to: (a) Tenant's franchisor's approval of this Sublease within thirty (30) days from the date of this Sublease, (b) Tenant being able to obtain all required approvals and permits from the necessary governmental authorities (i) to operate the Subleased Space as a Dunkin' shop with a drive thru, and (ii) for the installation of Tenant's standard improvements and storefront signage, and (c) Landlord and Master Landlord's approval for the installation of Tenant's standard improvements and storefront signage. If any of the foregoing contingencies are not satisfied, Tenant may terminate this Sublease and all prepaid rents and security deposit, if any, shall be returned to Tenant.

WHEREFORE, intending to be legally bound hereby, the Parties hereto execute this Sublease, or a counterpart hereof, as of the Effective Date first written above.

LANDLORD

Fort Myers Airport P, LLC

By: _____

Name: _____

Title: _____

TENANT

_____, LLC

By: _____

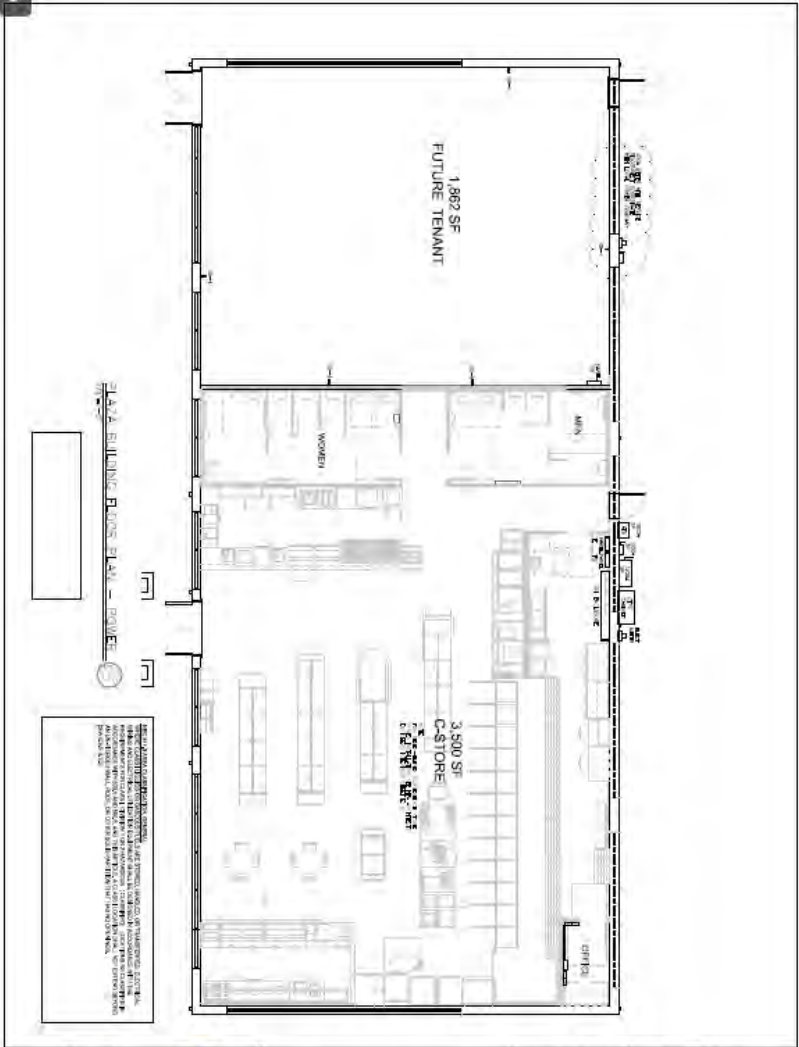
Name: _____

Title: _____

Exhibit A
Master Lease

Exhibit B
Subleased Space

100 m



NOT TO SCALE
 THIS DRAWING IS A PRELIMINARY DESIGN. ALL DIMENSIONS, MATERIALS, FINISHES, ETC., ARE SUBJECT TO CHANGE WITHOUT NOTICE. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL, STATE, AND FEDERAL AUTHORITIES. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT. THIS DRAWING IS THE PROPERTY OF THE ARCHITECT AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT.

<p>PROJECT: 58th WEST POSITION CLIENT: NT AIRPORT LOCATION: NT AIRPORT DATE: 2014</p>	<p>DESIGNED BY: N. D. ERYOU, PhD, PE CONSULTING ENGINEER 909 104 Street South, Suite 105 Inverloch, VIC 34152</p>	<p>PROJECT NO.: E202</p>	<p>SCALE: 1:100</p>	<p>DATE: 2014</p>
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Exhibit C
Landlords Work*

“As Is”

Exhibit D
Tenant's Parent's Guaranty

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|--|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a "Page Field Office Lease and Aeronautical Operator Agreement" with The Sundowners Inc.</p> <p>2. FUNDING SOURCE: n/a</p> <p>3. TERM: month-to-month, commenced April 1, 2021</p> <p>4. WHAT ACTION ACCOMPLISHES: Leases office space inside the GAC building at Page Field to The Sundowners Inc.</p> | <p>5. CATEGORY: 10.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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)</p> <p>NAME <u>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p> |
|---|--|

10. BACKGROUND:

The Sundowners Inc. ("Sundowners"), a flying club based at Page Field, desires to lease Office # 10 in Page Field's "GAC Building."

This proposed agreement will provide Sundowners with Office # 10, which is approximately 81.5 square feet. Rent for the office will be \$81.50 per month. The term will be month-to-month, which commenced April 1, 2021.

The agreement also incorporates the operational requirements found in the "Minimum Standards for Commercial Aeronautical Activities at Page Field General Aviation Airport" for flying clubs.

Attachments

1. Contract summary
2. Proposed Page Field Office Lease and Aeronautical Operator Agreement

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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> |
|---|---|

Lease Summary

Tenant: The Sundowners Inc.
605 Danley Drive
Fort Myers, FL 33907

Leased Premises: Office # 10, containing approximately 81.5 square feet, in the G.A.C. Building at Page Field

Allowed Use(s): office space related to the operation of a flying club

Term of Lease: commenced April 1, 2021; lease will continue month to month until terminated by either party with 30 days' advance written notice to the other

Rents and Fees: \$81.50 per month (i.e., approx. \$12/sf/yr); rent is adjusted for changes in CPI every 3 years while the lease remains in force

Security Dep./Perf. Guar.: \$250.00

Insurance Requirements: \$1,000,000 combined single limit commercial general liability insurance; Property casualty insurance not less than full replacement value of all personal property, equipment, and trade fixtures on the premises; \$1,000,000 combined single limit Aircraft liability and hull physical damage insurance; \$1,000,000 Employer's Liability insurance; and Workers' Compensation as required by state law

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.

THE SUNDOWNERS INC.

PAGE FIELD OFFICE LEASE AND AERONAUTICAL OPERATOR AGREEMENT

THIS LEASE AGREEMENT is entered into this 15 day of JUNE, 2021, 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 SUNDOWNERS INC.**, a Florida non-profit corporation with its principal offices located at Page Field Aviation Center, Page Field, Fort Myers, Florida 33907 ("Lessee").

Background

The Authority controls and operates an airport known as Page Field, located at Fort Myers, in Lee County, Florida ("Page Field" or the "Airport"), and has the power to lease premises and facilities within the Airport and to grant rights and privileges relating thereto. Lessee desires to lease an office in the GAC Building at Page Field from the Authority and to use the premises for certain specific aviation-related uses. The Authority is willing to lease said office and to grant Lessee such rights and privileges upon the terms and conditions provided below.

NOW THEREFORE, in consideration of the mutual promises herein, the Authority and Lessee hereby mutually agree as follows:

1. **DESCRIPTION OF LEASED PREMISES** - Subject to the terms, covenants, and conditions contained in this contract, the Authority does hereby lease to Lessee the following described real property (the "leased premises"):

Office #10 (which is approximately 81.5 square feet) located in the building known as the old "GAC Building," within the boundaries of Page Field, having a street address of 605 Danley Drive, Fort Myers, Florida. The Leased premises are more specifically depicted on Exhibit "B", attached hereto and incorporated

herein by reference.

2. TERM - The term of the lease of the premises described above shall commence on April 1, 2021, and shall thereafter continue month to month, unless or until terminated by either party as provided below.

3. USE OF LEASED PREMISES; RIGHT TO CONDUCT SPECIFIED AERONAUTICAL ACTIVITIES AT AIRPORT - Lessee shall use the leased premises only as an office related to its flying club. Lessee shall, during the term of this agreement, have the right, at Page Field, to operate a "flying club" as that term is defined in the "Minimum Standards for Commercial Aeronautical Activities at Page Field General Aviation Airport" adopted by the Lee County Port Authority on July 13, 1998, as amended May 12, 2003 (the "Minimum Standards") provided Lessee complies with (in addition to any applicable FAA requirements) all requirements of Part V ("Minimum Standards for Flying Clubs") of those Minimum Standards, as may be further amended from time to time. Lessee hereby acknowledges receipt of said Minimum Standards. Lessee is prohibited from providing, among other things, fuel sales and service and any other services which the Authority has elected to exclusively provide.

Lessee's allowed use of the GAC Building includes the right to use the existing common parking area immediately outside the building. The use of the leased premises shall be limited to those specified uses, and the Authority will not permit any other use of the leased premises, except upon written consent of the Authority's Executive Director or his designee. Lessee agrees to refrain from and prevent any use of the leased premises or Page Field 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, improper, or offensive use of the premises.

Lessee shall have the right to use all public Airport areas as reasonably required for

access to and from the leased premises, provided their agents, employees, suppliers, guests, or any type of invitees abide by the Airport Rules and Regulations as may be amended from time to time.

4. RENT - For and during the term of this lease, Lessee agrees to pay to the Authority, monthly, in advance, on the first day of each month without notice or demand, rent of \$81.50 plus applicable sales tax. Commencing on the first day of the calendar month immediately following the third anniversary of the commencement of the term of this lease, and every three years thereafter, the Authority may, upon written notice to Lessee, adjust the monthly rent for proportionate increases and decreases in the CPI (meaning the Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average, All Items, 1982-84 = 100) since the beginning of the lease term.

5. AIRCRAFT ACTIVITY FEES - The rent payments described above are in addition to, and not in lieu of, any aircraft activity fee or similar fee imposed on aircraft operations at the Airport, unless such fee is not applicable to Lessee's type of operations.

6. INTEREST ON LATE PAYMENTS - For all payments due to the Authority and not paid within thirty (30) days after the due date, interest at the then current statutory rate per annum shall accrue from the date due until the late payment is received by the Authority. This provision shall not preclude the Authority from terminating this Lease (or from any other remedy) for default in the timely payment of rents, fees, or charges, or from enforcing any other provisions contained herein or provided by law.

7. UTILITIES - Authority will pay all reasonable gas, electric, water, sewage, solid waste, and other utilities consumed within the Leased premises. Lessee shall pay all telephone

charges, including deposit, hook up, and telephone service.

8. ASSIGNMENT AND SUBLEASING - Lessee shall not assign this agreement or any right, privilege or license conferred by this agreement, either in whole or in part, or sublet all or any part of the Leased premises, without obtaining in advance the written consent of the Authority's Executive Director or his designee. Any change in the ownership or control of Lessee by transfer of capital stock or partnership interest or otherwise will be deemed an assignment for purposes of this section. The Authority reserves the right to withhold its consent to any assignment or sublease for any reason it deems in the best interest of the Authority. Lessee will remain liable for the performance of this lease regardless of assignment, sublease, or license with or without consent of Authority.

9. ALTERATIONS, REPAIRS, AND IMPROVEMENTS - The Lessee has inspected the premises and leases and accepts the premises "as is." Any improvements, repairs, additions, or alterations made to the leased premises must be approved in advance by the Authority and, exclusive of furniture and trade fixtures, shall become and remain the property of the Authority.

Lessee shall not remove or demolish, in whole or in part, any part of the leased premises, including improvements, without prior written consent of the Authority. Consent may be conditioned upon the obligation of Lessee to replace the same by a specified improvement.

10. ADVERTISING AND SIGNS - Lessee shall use a common sign provided by the Authority to identify all occupants of the building.

11. MAINTENANCE - Lessee 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. Authority will provide trash removal service for the common areas of the GAC Building. Authority agrees to maintain and make necessary repairs, structural or otherwise, to the interior of the GAC Building, the fixtures and equipment therein, and appurtenances thereto, except when such repairs are required due to the negligence or fault of the Lessee. Lessee will be responsible for all repairs caused by its negligence or fault. Otherwise, Authority will repair without limitation, the interior windows, doors and entrances, interior walls and ceiling, partitions, and lighting within the assigned area. Lessee agrees to keep in good condition the electrical equipment and the plumbing fixtures located at the building, ordinary wear and tear excepted.

12. LESSEE'S STANDARDS OF OPERATION

(A) Lessee will maintain the highest level of standards as it relates to service and quality of goods. The level of service and quality of goods shall be on a par with other similar first class establishments in comparable airports in the United States.

(B) Lessee's premises will be maintained in a first class manner with regard to safety and cleanliness. The Lessee will, at its sole expense, keep the assigned areas clean and free from garbage, rubbish, refuse, dust, and dirt. Authority will provide insect and rodent control.

(C) All personnel employed by the Lessee will be neat, clean, and courteous at all times, and shall abide by the Airport Rules and Regulations.

13. RIGHT OF ENTRY - Authority and Authority's agents or employees will have the right to enter the Leased premises to:

(i) view and inspect the premises at reasonable intervals during Lessee's

regular business hours, or at any time in case of an emergency, to determine whether Lessee is in compliance with the terms of this Agreement;

(ii) show the premises to prospective tenants; or

(iii) perform any and all things which Lessee is obligated to and has failed to do after fifteen (15) days written notice to act, including maintenance, repairs, and replacements to the premises. The cost of all labor, materials, and overhead charges required for performance of such work will be promptly paid by Lessee to Authority.

14. COMPLIANCE WITH LAWS - Lessee, its officers, agents, servants, employees, contractors, suboperators, licensees, and any other person over which Lessee has the right to control, shall comply with all present and future laws, including all statutes, ordinances, orders, directives, rules, and regulations, of the federal, state, and local governments, which may be applicable to its operations at the Airport.

15. INDEMNITY AND HOLD HARMLESS - Any use of the Leased premises, and any use of the Airport arising from this agreement, is at the sole risk of the Lessee. Neither Lee County nor the Authority shall be liable to the Lessee or to any person for any injury, loss, or damage to any person or property in or upon the Leased premises or on the Airport in connection with Lessee's operations under this lease. Notwithstanding any minimum insurance requirements prescribed elsewhere in this lease, Lessee hereby agrees to release, indemnify, and hold harmless Lee County, the Authority, and their respective Commissioners, officers, agents, and employees, from any and all claims, damages, suits, costs, expense, liability, actions, or proceedings, in any way resulting from or arising out of (i) the repair, maintenance, construction on, or improvement to, the Leased premises, or (ii) the Lessee's use or occupancy of the Leased

premises or any portion of the Airport, or (iii) any failure of Lessee to keep or perform the covenants to be kept or performed by Lessee under this agreement. Lessee acknowledges that the mutual promises contained in this lease are adequate consideration for this indemnification.

16. INSURANCE - Lessee must procure and maintain during the lease term, at its own expense, for the protection of the Authority and Lessee, in form satisfactory to the Authority, with one or more insurers qualified to do business in Florida:

- (1) Commercial general liability insurance (including premises, products and completed operations, bodily injury, property damage, and contractual liability) with a minimum combined single limit of \$1,000,000.00.
- (2) Insurance in the full replacement value of all personal property, equipment, and trade fixtures kept on the leased premises.
- (3) Aircraft liability and hull physical damage insurance covering all aircraft to be owned, leased, or operated by Lessee, naming the Authority as an additional insured, with combined single limits of not less than \$1,000,000.00.

As to non-owned aircraft, in lieu of Lessee having its own policy, the aircraft liability insurance requirement may be satisfied by having the Authority, the Lessee, and Lessee's pilot, named as additional insureds on a policy issued to the aircraft's owner, with limits of not less than those stated above.

- (4) Workers' Compensation and Employer's liability insurance, with limits of at least \$1,000,000 each accident, \$1,000,000 for disease (each employee), and a \$1,000,000 policy limit for disease;

The Authority must be named as additional insured and insurance must be primary and noncontributory on all policies of insurance except Lessee's workers compensation insurance. Lessee must provide the Authority with original certificates of insurance evidencing all insurance required, including renewal policies. Upon request by the Authority, Lessee will furnish the Authority, for any or all of the required policies, with a copy of the Declarations and Endorsements Page, or a complete copy the policy, including all amendatory endorsements

thereof. Each such policy or certificate shall contain a valid provision or endorsement that "This policy will not be canceled or materially changed or altered without first giving advance written notice to the Authority." Lessee hereby grants to Authority a waiver of any right to subrogation which any insurer of Lessee may acquire against Authority by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether the Authority has received a waiver of subrogation endorsement from the insurer.

17. NONDISCRIMINATION - Lessee for himself, his personal representatives, successors in interest, and assigns, as a 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 the premises; (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; (3) 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 non-discrimination covenants, Authority shall have the right to terminate the lease and to re-enter as if such lease had never been made or issued. The provision shall not be effective until the proceedings of Title 49, Code of Federal Regulations, Part 21 are followed and completed,

including exercise or expiration of appeal rights.

18. DISABLED ACCESS COMPLIANCE - Lessee agrees to comply with the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. Lessee's compliance shall include but not necessarily be limited to the following:

- (i) Lessee shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, compensation, benefits, discipline, layoffs, and termination of employment.
- (ii) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of Lessee.
- (iii) Lessee shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- (iv) Where required by law, Lessee shall comply with Authority's disabled access requirements by bringing up to code and making accessible any areas of the Leased premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of the Lessee.
- (v) Lessee shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. Lessee and sublessees shall be individually responsible for their own ADA employment program.

19. GOVERNMENTAL RESTRICTIONS - 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.

20. NONEXCLUSIVITY - Nothing herein contained shall be deemed to grant Lessee any exclusive right or privilege in the conduct of any activity on the Airport, except that, subject

to the terms and conditions hereof, Lessee shall have the right of possession to the Leased premises. Authority expressly reserves the right to grant the same or similar privileges to other businesses on other parts of the Airport.

21. 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.

22. TERMINATION BY EITHER PARTY - Either the Authority or Lessee may terminate this lease at any time, for any reason or no reason, effective on the last day of any calendar month, by giving at least thirty (30) days advance written notice to the other party.

23. LICENSES AND TAXES - Lessee shall have and maintain in current status all federal, state, and local licenses and permits required for the operation of its business. Lessee agrees to bear, pay, and discharge, on or before their respective due dates, all federal and state taxes, fees, assessments, and levies and all local property taxes 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. Authority will bear and pay all local special assessments and fees associated with Lessee's use of the leased premises.

24. GUARANTY OF FAITHFUL PERFORMANCE AND PAYMENT - Lessee shall, upon execution of this agreement, deliver to the Authority a certified check, or cashier's check, or irrevocable letter of credit in an amount equal to two hundred fifty dollars (\$250.00). Such guarantee shall serve as a surety for the full and faithful performance of all terms, covenants, and conditions of this agreement including the rentals, fees, and charges to be paid,

throughout the first year of this agreement, and if Lessee defaults on any duty under this agreement, Authority may apply the security deposit or funds from the letter of credit to damages sustained. If Lessee faithfully performs the obligations of this agreement and timely vacates the premises upon expiration, Authority will repay the security deposit, without interest, within 45 days after such expiration and timely vacation of the premises.

25. NOTICE - Notice to Authority will be sufficient if sent by registered mail, postage prepaid, to: 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 Leased premises. The parties may designate in writing other addresses for notice from time to time.

26. SURRENDER OF POSSESSION - Lessee will quit and voluntarily deliver up possession of the Leased premises at the end of the leasehold term in good condition excepting only ordinary wear.

27. 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.

28. CAPTIONS - The headings of the several articles of this agreement 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 agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

29. 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, Lessee 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.

30. INCORPORATION OF EXHIBITS - All exhibits referred to in this agreement are intended to be and hereby are specifically made a part of this agreement.

31. TIME - Time is of the essence in the performance of this agreement.

32. WAIVER OF 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 premises.

33. GOVERNING LAW - This agreement will be governed by the laws of Florida.

34. RADON GAS - Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the Lee County Public Health Unit.

35. CIVIL RIGHTS AND TITLE VI

A. 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 Lessees 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.

B. 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:

- (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 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.
- (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 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 the 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.

C. **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:

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.*).
36. ENTIRE AGREEMENT - 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 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 SUNDOWNERS INC.
(Lessee)

By: [Signature]
Print Name: STANLEY MLECZKO
Title: PRESIDENT
Date: 6/15/21

WITNESSED BY:

[Signature]

Witness
THOMAS ERALICH
Print Name
Date: 6/15/2021

[Signature]

Witness
MARK M STEINBERG
Print Name
Date: 06/15/21

LEE COUNTY PORT AUTHORITY

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

Date: _____

ATTEST:
LINDA DOGGETT, CLERK

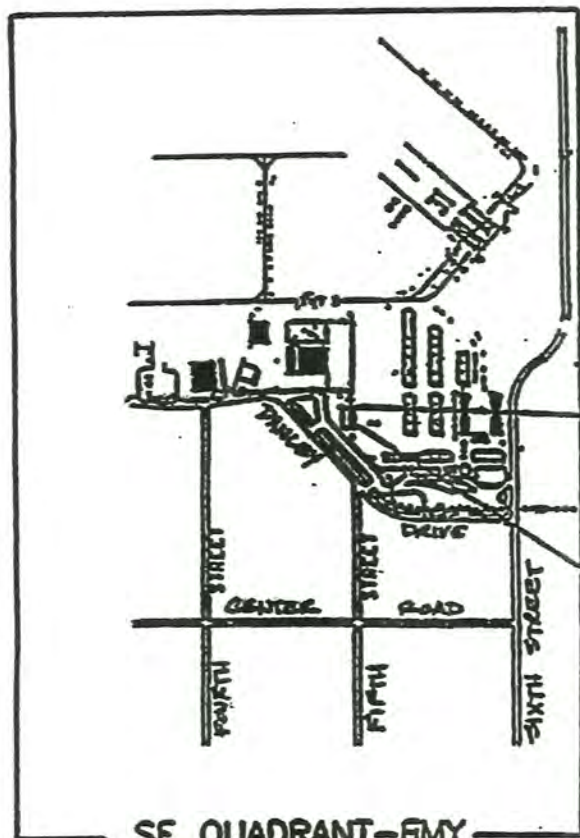
By: _____
Deputy Clerk

Date: _____

Approved As To Form for the
Reliance of the Lee County Port
Authority only:

By: _____
Port Authority Attorney
Date: _____

EXHIBIT A

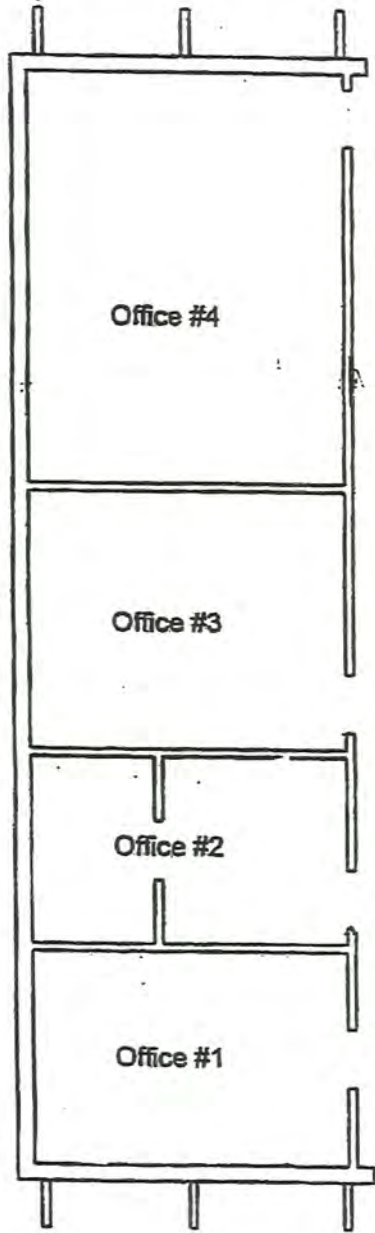


GAC
BLDG
6,000 sq. ft.
(approximate)



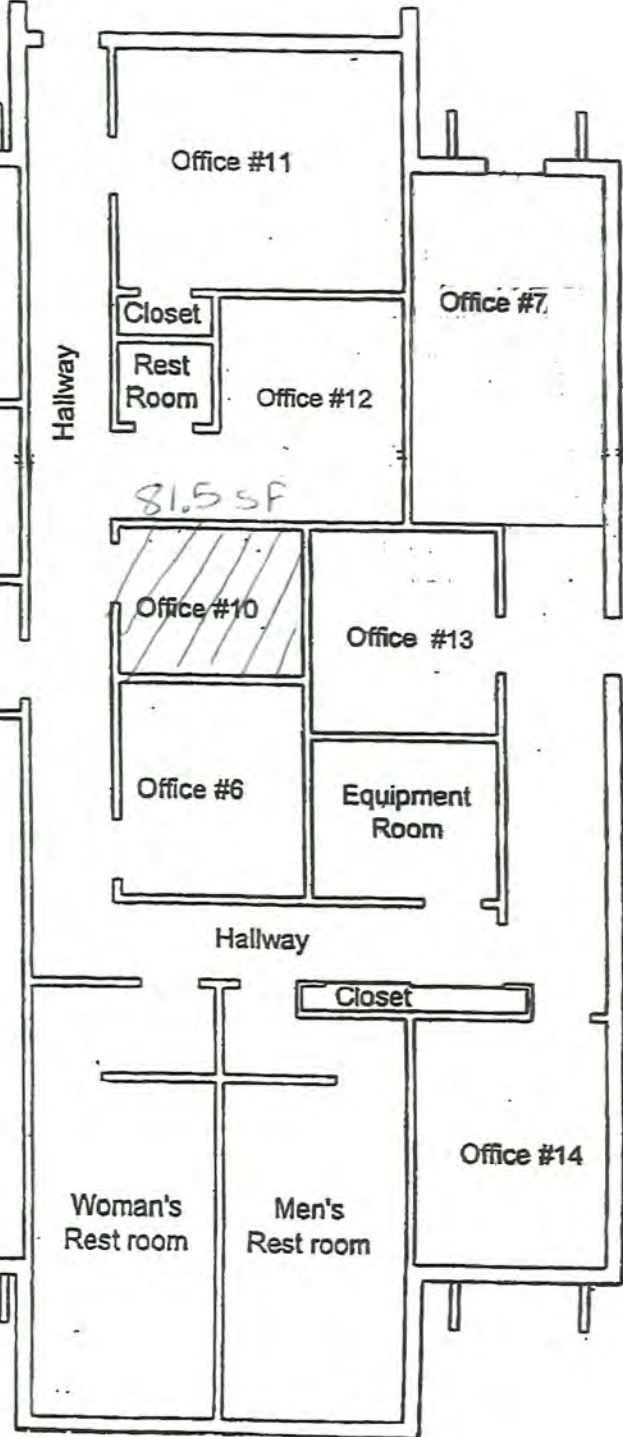
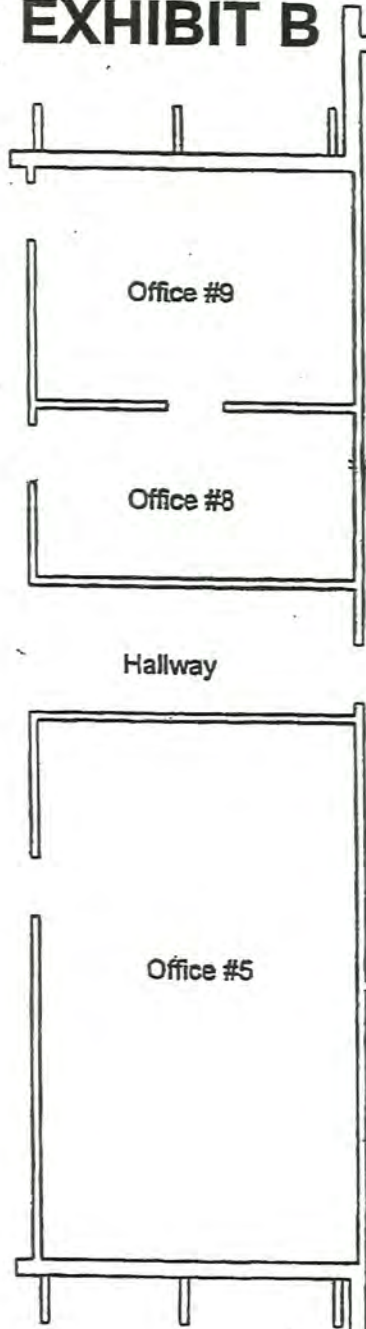
NOT TO SCALE

EXHIBIT B

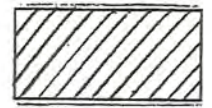


East Hall Lobby

West Hall Lobby



LEASED
PREMISES



BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve a "Second Amendment to Lease of Hangars at Page Field" with Paragon Airplane Leasing Co.
2. **FUNDING SOURCE:** N/A
3. **TERM:** 10 years, plus two potential options to extend for an additional 5 years each.
4. **WHAT ACTION ACCOMPLISHES:** Adjusts Lessee's maintenance responsibilities and provides for rent credit if Lessee replaces the roof of Hangar B.

5. **CATEGORY:** 11.
Consent Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Brian McGonagle

DIV. Administration

10. **BACKGROUND:**

Paragon Airplane Leasing Co., incorporated in Michigan ("Paragon Michigan") was a tenant under two leases from the Authority:

- (1) a "Lease of Facilities at Page Field," dated March 8, 2018, covering "Hangar B," which is located at 511 Danley Drive (the "2018 Lease"); and
- (2) a "Page Field Lease Agreement," dated October 29, 2007, as amended January 9, 2012, covering two offices in the G.A.C. Building at 605 Danley Drive (the "GAC Lease").

On November 5, 2020, the Board approved a "Termination of Existing Leases and New Lease of Hangars At Page Field" (herein the "New Lease") with Paragon Michigan and Paragon Airplane Leasing Co., incorporated in Florida ("Paragon Florida"). The New Lease terminated Paragon Michigan's 2018 Lease and GAC Lease, and replaced it with a new lease of Hangars B and D to Paragon Florida, effective December 1, 2020. The New Lease initially covered only Parcel A (which includes Hangar B). Parcel B (including Hangar D) was added to the lease effective February 9, 2021 (i.e. the "Expansion Date"). The New Lease was amended June 24, 2021, to provide for a temporary reduction in rent during Lessee's remodeling of Hangar B.

This proposed second amendment will provide Paragon Florida with a fixed rent credit in the amount of

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<i>Benjamin R. Siegel</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)

\$103,235.45 provided that Paragon Florida first completes the full replacement of the roof Hangar B. Additionally, Paragon Florida will take over from the Authority, the responsibility for all future maintenance and repairs to the roof of Hangar B as well as for the replacement of an entry way step to Hangar B with an ADA accessible ramp.

All other provisions of the New Lease including the term of lease remain unchanged and in full force.

Attachments:

1. Contract Summary
 2. Proposed Amendment
-

Lease Summary

(Including effects of the First Amendment, and unaffected by the proposed Second Amendment)

Tenant: Paragon Airplane Leasing Co.
511 Danley Drive
Fort Myers, FL 33907

Leased Premises: Initial leased premises is approximately 33,146 square feet at Page Field, including Hangar B, located at 511 Danley Drive. Effective February 9, 2021 (the "Expansion Date"), an additional parcel of land containing approximately 1.44 acres, including Hangar D, located at 531 Danley Drive, will be added to the leased premises.

Allowed Use(s): Aircraft flight instruction services, Part 135 charter air transportation, aircraft management services, and, upon the Expansion Date, aircraft maintenance and repair services

Term of Lease: Begins December 1, 2020, and continues until the earlier of 11:59 p.m. on the date that is ten (10) years after the "Date of Beneficial Occupancy" (defined in the lease), or December 1, 2032, with potentially two options to extend for an additional five (5) years each.

Rents and Fees: Initial Base Rent of \$7,546.77 per month, subject to CPI adjustment January 1, 2021.

Beginning on the Expansion Date, Base Rent will be changed to the following:

<u>Lease Year</u>	<u>Monthly Rent</u>
1	\$13,660.00
2	\$13,849.93
3	\$14,042.68
4	\$14,238.26
5	\$14,436.85
6	\$14,772.77
7	\$15,117.11
8	\$15,470.02
9	\$15,831.78
10	\$16,202.61

Effective February 9, 2021, the monthly Base Rent then in effect shall be reduced by the amount of \$1,500.00 per month until the earlier of: (a) the issuance of a temporary or permanent certificate of occupancy for Hangar B; or (b) December 31, 2021.

Subject to CPI adjustment on the first day of the calendar month immediately following the date that is thirteen (13) years after the Expansion Date, and every three (3) years thereafter.

Security/Perf. Guaranty: \$11,300.00

Insurance Requirements: \$5 million combined single limit CGL (including premises, products and completed operations, and contractual liability); \$5 million combined single limit aircraft liability; \$1 million combined single limit business auto; property insurance, including fire and extended coverages, for all risks of physical loss or damage to the premises and improvements, for full replacement value; \$1 million employer's liability; and workers' compensation as required by state law

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.

SECOND AMENDMENT TO

LEASE OF HANGARS

AT PAGE FIELD

THIS AMENDMENT is made and entered into this 8th day of October, 2021, 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, **PARAGON AIRPLANE LEASING CO.**, a Florida corporation, with offices at 511 Danley Drive, Fort Myers, Florida 33907 (herein referred to as "Lessee").

Background

The Authority and Lessee entered into a lease agreement entitled "Termination of Existing Leases, and New Lease of Hangars at Page Field" dated November 5, 2020, and amended June 24, 2021 (herein the "Lease"). The parties desire to amend the Lease to adjust Lessee's maintenance responsibilities and to adjust the monthly rent due upon the occurrence of certain maintenance actions.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby agree as follows:

1. LESSEE'S MAINTENANCE RESPONSIBILITIES.

Section 5.5 of the Lease, entitled "Maintenance and repairs of the premises" is hereby deleted and replaced with the following:

Section 5.5 Maintenance and repairs of the premises.

Except as expressly provided below, Lessee will be responsible for all maintenance and repairs required to keep the leased premises, all improvements thereon, and any septic systems serving them, in a clean and orderly condition and in a good state of repair at all times.

Lessee 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. Lessee will maintain the roof of the existing building on Parcel A, including all repairs and replacement as needed.

Notwithstanding the preceding, the Authority will, during the initial term hereof, perform or cause to be performed on the existing building, at its own expense, drainage improvements to direct storm water away from the metal sides of the building, as outlined in report # 17-006-001 prepared by Fernando Zabala, NCARB AIA, entitled "FMY Existing Hangar Assessment" (inspection date April 27, 2017), a copy of which has been provided to Lessee.

2. RENT CREDIT UPON FULL ROOF REPLACEMENT.

Article 3 of the Lease entitled "RENT" shall be amended to include the following:

Section 3.8 Rent Credit Upon Full Roof Replacement. If Lessee undertakes and completes the "Full Roof Replacement" as defined below, of Hangar B, located on Parcel A, then Lessee shall be entitled to a "Rent Credit" in an amount of \$103,235.45, provided that:

1. All governmental inspections have been completed, and all applicable permits have been closed out to the satisfaction of the permitting agency;
2. Lessee provides documentation, satisfactory to the Authority, evidencing the total replacement cost for the Full Roof Replacement has been paid in full by Lessee to Lessee's contractor(s); and
3. Lessee is not otherwise then in default of any other provision of the Lease.

For purposes of this section, "Full Roof Replacement" shall mean the complete removal and replacement of the entire roofing system with new materials. All roofing proposals and plans are subject to the Authority's review and final approval, which shall not be unreasonably withheld. Lessee and its contractors shall comply with all requirements of the

Lease including those set forth in Section 5.3.

Beginning on the first day of the calendar month immediately following the completion of the Full Roof Replacement and Lessee's satisfactory documentation of the final replacement cost, the Rent Credit (as approved by the Authority) shall be applied to offset Lessee's monthly Base Rent then due. Any remaining Rent Credit shall continue to be applied to offset Lessee's Base Rent, month after month, until the full value of the Rent Credit has been exhausted. Thereafter, Lessee's monthly Base Rent shall follow the schedule as set forth in Section 3.5 of the Lease.

3. NO OTHER CHANGES

All other provisions of the Lease remain unchanged and in full force. IN WITNESS whereof, the parties hereto have subscribed their names on the date first above written.

PARAGON AIRPLANE LEASING CO.

(Lessee)

By: 

Print Name: Sarah A Schoensee

Title: Director

Date: 10/08/2021

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

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board consent to assignment of a Lease Agreement from Societe Internationale De Telecommunications Aeronautiques, a Belgium Co-operative, to SITA Information Networking Computing USA Inc., a Delaware corporation.
2. **FUNDING SOURCE:** N/A
3. **TERM:** commenced September 9, 2005; continues month-to-month
4. **WHAT ACTION ACCOMPLISHES:** Allows Societe Internationale De Telecommunications Aeronautiques to assign its Lease Agreement to SITA Information Networking Computing USA Inc., a Delaware corporation.

5. **CATEGORY:** 12.
Consent Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. AGENDA:

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. REQUESTOR OF INFORMATION:

(ALL REQUESTS)

NAME Brian McGonagle

DIV. Administration

10. BACKGROUND:

Societe Internationale De Telecommunications Aeronautiques ("SITA") operates the "Aircraft Communications Addressing and Reporting System" (ACARS), which is utilized by airlines and provides digital transmission of messages between aircraft and ground stations. In support of its activities, SITA leases space in an equipment room on the third floor of the midfield terminal building pursuant to a Lease Agreement dated June 26, 2006, (the "Lease"). The Lease requires the Board's consent for SITA to assign it to another party.

SITA desires to assign its Lease to its subsidiary, SITA Information Networking Computing USA Inc. Approval of this agenda item by the Board of Port Commissioners will constitute consent by the Lee County Port Authority to the proposed assignment of the Lease from Societe Internationale De Telecommunications Aeronautiques, a Belgium Co-operative, to SITA Information Networking Computing USA Inc., a Delaware corporation.

Attachments:

1. Contract summary for existing Lease Agreement
2. Existing Lease Agreement

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<i>Benjamin R. Siegel</i>

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

- APPROVED
APPROVED as AMENDED
DENIED
OTHER

13. PORT AUTHORITY ACTION:

- APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER

Contract Summary

Tenant: Societe Internationale De Telecommunications Aeronautiques
3100 Cumberland Boulevard, Suite 200
Atlanta, GA 30339

Leased Premises: approximately fifteen (15) square feet of floor space
located in Room No. 3013 on the third floor of the Midfield terminal.

Allowed Use(s): uses related to its communications equipment at RSW

Term of Lease: Initial term commenced on September 9, 2005, and continues month
to month until terminated by either party with 60 days' written notice

Rents and Fees: \$100.00/month (payable biannually)

Security/Perf. Guaranty: n/a

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 AGREEMENT

THIS LEASE is made this 26 day of JUNE, 2006,
between **LEE COUNTY PORT AUTHORITY** as LESSOR, and **SOCIETE
INTERNATIONALE DE TELECOMMUNICATIONS AERONAUTIQUES**
("SITA"), a Belgium Co-operative, with offices located at 3100 Cumberland Boulevard,
Suite 200, Atlanta, Georgia, 30339, as LESSEE.

1. PREMISES. LESSOR hereby leases to LESSEE the following:
Approximately fifteen (15) square feet of floor space located in Room No. 3013 on the
third floor of the new "Midfield Terminal" building at the Southwest Florida International
Airport, as depicted on Exhibits A and B attached hereto.

2. TERM. The term of this lease shall commence on September 9, 2005, and will
continue month to month thereafter unless or until terminated by either party upon at least
sixty (60) days prior written notice to the other.

3. RENT. LESSEE shall pay to LESSOR a rental of six hundred dollars and no
cents (\$600.00) per six-month period, payable in advance on or before each April 1st and
October 1st. Rental for any partial period at the beginning and the end of the term will be
prorated.

4. USE AND ACCESS. The leased premises may be used only for the
installation, use and maintenance of radio equipment used in the provision of
communications services to airlines serving Southwest Florida International Airport, and
for no other use. Provided LESSEE first obtains a written Work Permit from the
Authority, LESSEE (a) may install, operate, and store on the premises such
communication equipment as may be necessary to its business, including transmitters,
receivers, power supplies, and antennas; and (b) may install one antenna on the roof of
the terminal building, subject to all applicable height restrictions and Authority's written

consent as to the location. LESSEE shall have access to the premises during normal business hours, seven days a week, by calling the Authority's Maintenance Department.

5. UTILITIES AND TAXES. LESSEE, at its expense, may arrange for such telephone and communication service as it may require. LESSOR shall pay all taxes on the leased premises, except upon LESSEE's tangible personal property. Electric power shall be paid for by LESSOR and is included in the rent.

6. LIABILITY. Any use of the leased premises or the airport is at the sole risk of LESSEE. LESSEE hereby agrees to release, indemnify, and hold harmless LESSOR and Lee County and their respective commissioners, officers, agents, and employees from any and all claims, damages, suits, costs, expense, liability, actions, or proceedings, in any way resulting from or arising out of use or occupancy of the premises by LESSEE, its employees, contractors, or invitees, unless caused by LESSOR's gross negligence.

7. ASSIGNMENT & SUBLETTING. LESSEE shall not assign this lease or sublet the premises without LESSOR's written consent.

8. REMOVAL OF LESSEE'S PROPERTY. At the expiration of this agreement, LESSEE shall remove all its property and equipment, leaving the premises in their original condition, ordinary wear and tear excepted. However, LESSEE may leave any of its improvements on the premises at such expiration, and these shall become the sole property and responsibility of LESSOR unless, at least 30 days before the end of the lease term, LESSOR has given LESSEE written notice to remove them.

9. COMPLIANCE WITH LAWS. LESSEE shall comply with all applicable laws and regulations governing its use of the premises.

10. NOTICES. All notices hereunder to either party shall be delivered by hand or sent by registered postage prepaid, addressed as follows, or to such other address as each party may designate from time to time:

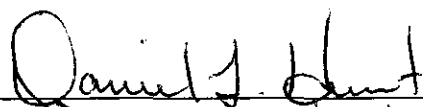
To LESSOR: Lee County Port Authority
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913
Attention: Department Director, Airport Business Services

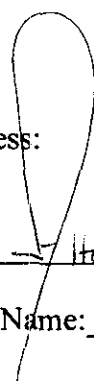
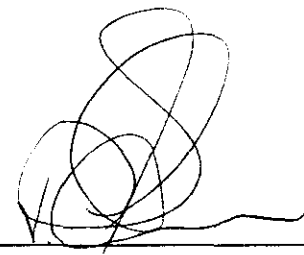
To LESSEE: Societe Internationale de Telecommunications
Aeronautiques (SITA)
3100 Cumberland Boulevard, Suite 200
Atlanta, Georgia 30339
Attention: SITA-VHF Deployment Manager-AME

11. ENTIRE AGREEMENT. This Lease Agreement constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings concerning the same, whether oral or written. The provisions of this Lease Agreement may be modified, amended, or waived only by a written instrument executed by the Lessor and the Lessee.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have signed this agreement.

LESSEE:
SOCIETE INTERNATIONALE
DE TELECOMMUNICATIONS
AERONAUTIQUES (SITA)

By: 
Print Name: Daniell B. Hunt
Title: Fac Mgr.

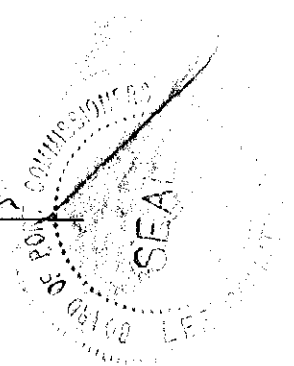
Witness: 
By: 
Print Name: Atton V. Shuler

LESSOR:
LEE COUNTY PORT AUTHORITY

By: *[Signature]*
Chairman or Vice Chairman,
Board of Port Commissioners

Attest:
Charlie Green, County Clerk

By: *Michelle S. Cooper*
Deputy Clerk



Approved as to form:

[Signature]
Attorney for Lee County Port Authority

ROOM
3013

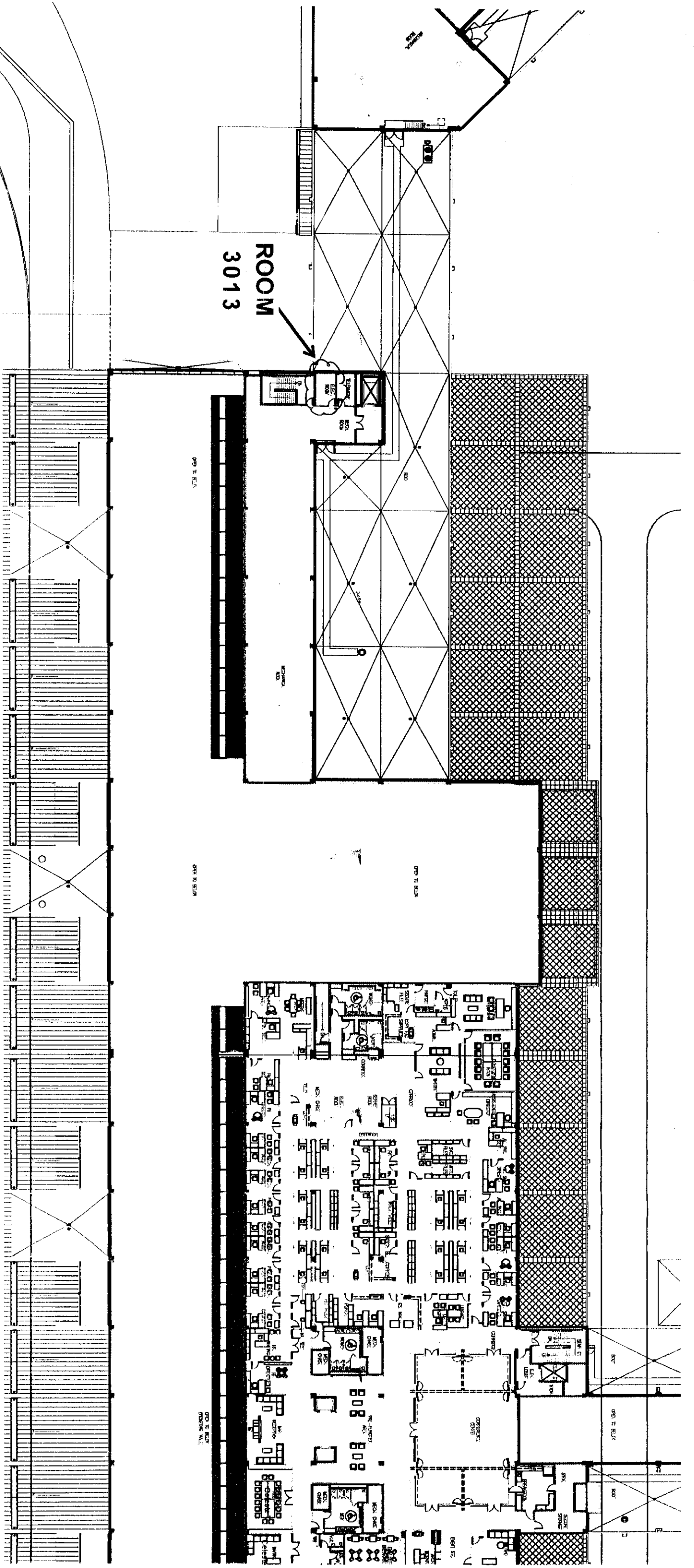
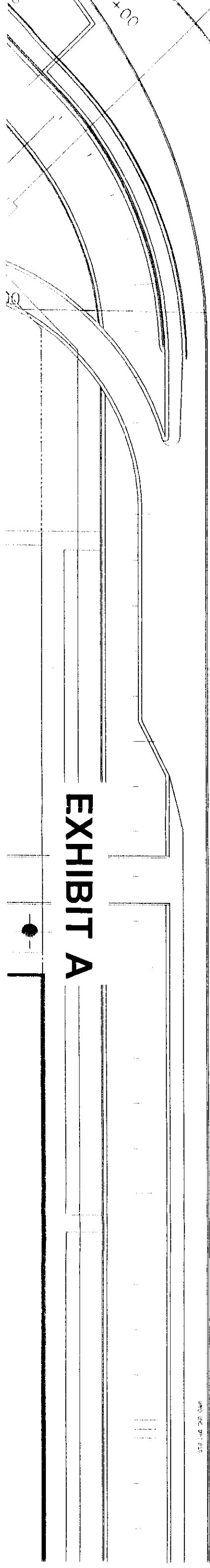


EXHIBIT A



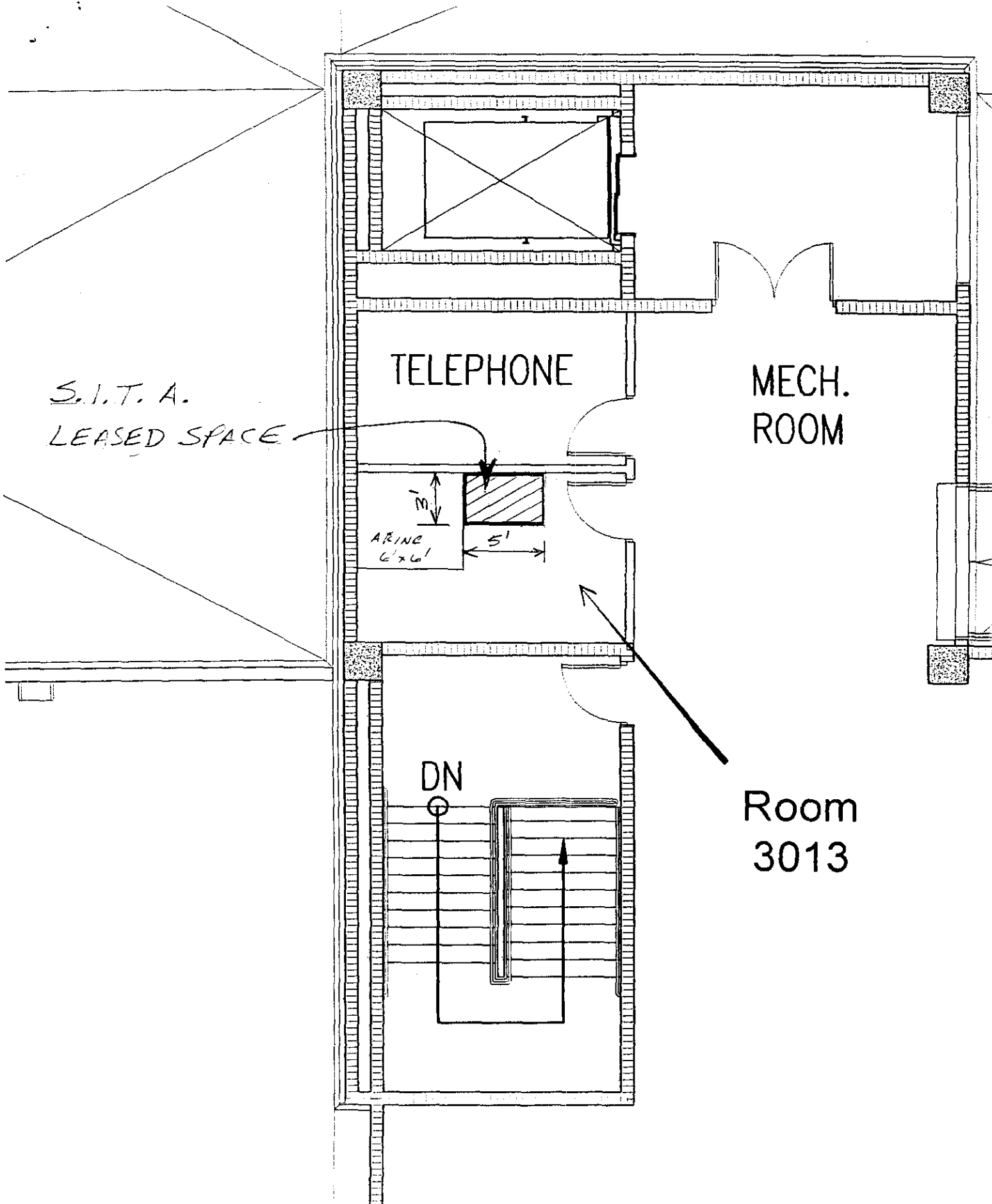


Exhibit B

NOT TO SCALE

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board award RFB 21-33MLB Generator Inspections for the Lee County Port Authority, to LJ Power Inc., the lowest, most responsive, responsible bidder in the annual estimated amount of \$22,790 per the terms and conditions of the contract.
2. **FUNDING SOURCE:** General Airport Operating Revenues collected during the normal operation of Southwest Florida International Airport. Funds are available in Account String WJ5100041200.503490 - Other Contracted Services.
3. **TERM:** One (1) initial three-year term with one (1) additional two-year renewal period with services to commence on or around November 15, 2021.
4. **WHAT ACTION ACCOMPLISHES:** Award RFB 21-33MLB contract to LJ Power Inc., the lowest, most responsive, and responsible bidder in the estimated annual amount of \$22,790 per the terms and conditions of the contract and allow the Executive Director to extend up to one (1) additional two-year renewal.

5. **CATEGORY:** 13.
Consent Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
 CONSENT
 ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Steve Hennigan

DIV. Aviation

10. **BACKGROUND:**

On July 6, 2021, Lee County Port Authority released Request for Bid (RFB) 21-33MLB for Generator Inspections and Maintenance for Southwest Florida International Airport. The services require the successful bidder to furnish all labor, equipment, and tools necessary to perform generator inspections on all 12 of the generators in operation at the Southwest Florida International Airport maintained by the Lee County Port Authority. Inspections will be conducted in accordance with the requirements stated in the solicitation documents to the Authority. The term of the agreement will be for three years with the option to renew for one additional two-year period.

The RFB was broadcast through the Lee County Port Authority website, Airport Minority Airport Council (AMAC), Airport Council International (ACI), Florida Airport Council (FAC), and in IonWave, the Authority's e-procurement system.

IonWave electronically notified seventy (70) potential bidders of the RFB. Three (3) bidders submitted a bid for consideration.

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Steven P. Hennigan</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<i>Benjamin R. Siegel</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)

The bid submitted by LJ Power, Inc. was evaluated and deemed the lowest responsive, responsible bidder; meaning, the bidder has submitted a bid which conforms in all material respects to the requirements set forth in the RFB and submitted the lowest bid. Therefore, findings of the evaluation of bids are that LJ Power, Inc. submitted the bid with the lowest grand total.

Staff recommends the Board approve the service provider agreement with LJ Power, Inc. for an initial three (3) year contract term with the option to extend one (1) additional two-year renewal at the discretion of the Authority and executable by the Executive Director. The annual estimated expense for generator testing of the 12 existing generators in operation is \$22,790 or a total contract cost over a five-year period of \$113,950.

As noted within the contract there is a provision to add new generators that may come online throughout the course of this contract to include, but are not limited to, the Airfield Vault. Therefore LCPA seeks board approval to allow LJ Power, Inc. to provide pricing for additional locations; if the received pricing is fair and consistent, additional generators may be awarded to LJ Power, Inc. as necessary.

Attachments:

- (1) RFB 21-33MLB Generator Inspections for Lee County Port Authority
- (2) Bid Opening Tabulation of RFB 21-33MLB
- (3) Notice of Intent to Award
- (4) Service Provider Agreement



Purchasing Office
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

REQUEST FOR BIDS (RFB) 21-33MLB

FOR

**GENERATOR INSPECTIONS AND MAINTENANCE FOR THE
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT**

DATED: 7/6/2021

PURCHASING OFFICE DESIGNATED CONTACT

Megan Bowman, Purchasing Agent
Telephone: (239) 590-4558
E-mail: mlbowman@flylcpa.com

NO PRE-BID MEETING

INQUIRIES & CLARIFICATION REQUESTS DEADLINE:

Thursday, July 15, 2021 by 5:00 p.m. local time

ELECTRONIC BID SUBMISSION INTO IONWAVE DUE DATE AND TIME:

Thursday, August 5, 2021 prior to 2:00 p.m. local time

The opening of bids may be viewed through Google Meets

Remote Meeting ID: meet.google.com/quu-hqra-qvb

Phone Number: (US)+1 318-526-1525 | PIN: 948 840 088#

NOTICE OF COMPETITIVE OPPORTUNITY

The Lee County Port Authority (hereafter referred to as the “Authority”) invites the submission of electronic bids from all interested and qualified corporations, partnerships and other legal entities authorized to do business in the state of Florida to compete for the opportunity to perform **Generator Inspections and Maintenance for the Southwest Florida International Airport** as specified in this Request for Bids (RFB). Solicitation documents may be accessed at <https://flylcpa.ionwave.net/Login.aspx> or by contacting the Purchasing Office.

Southwest Florida International Airport (RSW) 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 more than 10.2 million passengers in 2019 and is one of the top 50 airports in the United States for passenger traffic with 11 airlines currently providing service throughout the United States and Canada. The Florida Department of Transportation recently awarded RSW with the 2020 Commercial Airport of the Year Award, which was the seventh time the airport has received this prestigious award. RSW has been ranked in the top tier of medium-hub airports for traveler satisfaction by J.D. Power and has received numerous other awards and recognition at a local, regional and national level. In addition, RSW is projected to be one of the fastest-growing, non-hub airports during the next 10 years. A new terminal complex with 28 gates and state-of-the-art facilities opened in 2005; however, to remain relevant to the dynamic nature of the customer experience, the airport recently completed a ticket and gate counter modernization project, along with technology enhancements. In the planning stages is a terminal expansion project to consolidate security checkpoints and significantly increase passenger amenities. Other future infrastructure improvements include a new Airport Traffic Control Tower, roadway and airside pavement and rehabilitation projects, as well as a future parallel runway.

PRE-BID MEETING

There is no pre-bid meeting scheduled for this solicitation.

DEADLINE FOR QUESTIONS AND CLARIFICATION REQUESTS

Inquiries or requests for clarifications of any information contained in this RFB must be received no later than the time and date indicated on the cover page. All inquiries, suggestions or requests pertaining to this RFB must be submitted to the designated contact in the Lee County Port Authority Purchasing Office (see contact information on cover page). This deadline has been established to maintain fair treatment for all potential Bidders, while ensuring an expeditious selection process.

PUBLIC RECEIVING AND OPENING OF BIDS

The Authority is accepting bids submitted electronically in IonWave until Friday, July 9, 2021, before 2:00 p.m., local time. Bids sent in any manner other than electronically to IonWave will not be accepted. **Hard copies, faxed bids and electronically submitted bids sent directly to the Authority will not be accepted.**

The public is welcome to view the bid opening remotely through Google Meets using the link indicated on the cover page of the RFB. □□□□

Bids must be submitted in IonWave prior to the deadline for submission of bids. Bidders are responsible for taking all necessary steps to ensure that bids are received by the due date and time. The Authority is not responsible for technology problems or any other issues that cause the deadline for receipt of bids to be missed.



Disadvantaged Business Enterprise (DBE) and Woman and Minority-Owned Business Enterprises (W/MBE) companies are encouraged to respond to this notification.

For more information, please contact:

Megan Bowman, Procurement Agent
Phone: (239) 590-4558 | Email: mlbowman@flylcpa.com

Lee County Port Authority
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913-8899

[Remainder of page intentionally left blank]

PART A
INSTRUCTIONS FOR BIDDERS

The Lee County Port Authority (Authority) invites the submission of bids from interested and qualified individuals, corporations, partnerships, and other legal entities authorized to do business in the state of Florida with demonstrated expertise in providing the services as described in this Request for Bids (RFB). Bidders must meet the minimum qualifications stated herein and comply with the Instructions for Bidders contained in this Part A. The Authority specifically reserves the right to reject any or all bids, to waive technicalities, to make inquiries, and to request additional information from all Bidders, and to select the bid which is, in the Authority's sole discretion, judged to be in the best interest of the Authority.

A.01 PUBLIC RECEIVING AND OPENING OF BIDS

Bids submitted in response to this RFB will be electronically unsealed and read publicly after the time specified for receipt of bids stated in this RFB. The Authority reserves the right to extend this date and time for opening at Authority's sole discretion, when deemed to be in the best interest of the Authority. Bidders, their authorized agents and other interested persons are invited to view the opening of bids remotely through electronic means by using the link to the Google Meets that is provided on the cover page of this RFB.

A.02 ELECTRONIC SUBMISSION OF BIDS

The Authority is accepting electronic bids in IonWave at <https://flylcpa.ionwave.net/Login.aspx>. Submission of bids prior to the deadline is solely and strictly the responsibility of the Bidder. It is the responsibility of the Bidder to take all necessary steps to ensure its bid is received by the due date and time. The Authority Purchasing Office will not be responsible for delays caused by technological issues that may occur or for any other reason. The Bidder is hereby directed to cause submission of its bid prior to the bid opening time. Hard copy or bids sent electronically and directly to the Authority will not be accepted. Faxed bids will not be accepted. Companies must register with IonWave to participate in any Lee County Port Authority solicitation.

All electronic documents must be PDF/A compliant. PDF/A compliant documents have embedded fonts and do not reference external files. If applicable, layers must not be preserved from CADD drawings. Scanned documents must be created as PDF/A compliant, made text searchable, and have a minimum resolution of 300 dpi.

A.03 QUESTION AND CLARIFICATION PERIOD

It is the responsibility of each Bidder, before submitting a bid, to (a) examine the RFB documents thoroughly; (b) if applicable, visit the project site(s) to become familiar with local conditions that may affect cost, progress, performance or the furnishing of the work; (c) consider all applicable local, federal and state codes, laws, and regulations that may affect the work; and, (d) study and carefully correlate Bidder's observations with the RFB documents. Bidder is required to notify the Authority of any conflicts, errors, or discrepancies in the RFB documents before submitting a bid.

Each Bidder must examine all RFB solicitation documents and must judge for itself all matters relating to the adequacy and accuracy of such documents. Inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFB documents must be made in writing and sent to the designated Procurement Agent on or before the deadline for questions and clarification requests. All questions received and responses given will be provided in the form of a written addendum to this RFB. The Authority will not respond to inquiries received after the published deadline.

A.04 ADDENDA

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.

Interpretations, corrections or changes made by the Authority to this Request for Bids will be made by written addenda. The Authority will not be responsible for oral interpretations given by any Authority employee, representative, or others, and Bidders are not entitled to rely upon any such oral statements. The issuance of a written addendum issued by the Purchasing Office is the only official method whereby an interpretation, clarification or additional information will be given.

It is the responsibility of the Bidder, prior to submitting a bid, to review IonWave to determine if addenda to the RFB were issued and, if issued, to acknowledge and incorporate same into Bidder's bid. All addenda will become part of the bid documents as if contained in the originally issued solicitation documents.

A.05 ACCESSING SOLICITATION DOCUMENTS AND ADDENDA

The Authority uses a third party provider, IonWave, to distribute solicitation documents including addenda and bid results. Interested parties may register to receive this information free of charge by contacting IonWave Technologies Vendor Support at 866-277-2645, or by registering at <https://flylcpa.ionwave.net/Login.aspx> or through the electronic link available at the Authority website www.flylcpa.com/purchasing.

A.06 PRE-BID MEETING

If applicable, a pre-bid meeting will be held on the date and time specified on the cover page of this RFB. The cover page will also note if the pre-bid meeting is Non-Mandatory or Mandatory and if a site visit is planned and if remote attendance is available. While attendance is not required at a pre-bid meeting that has been deemed non-mandatory; it is strongly advised and encouraged. Conversely, attendance is **mandatory** for pre-bid meetings that are indicated as mandatory on the cover page of this RFB. A Bidder's failure to attend a mandatory pre-bid meeting will result in its bid being considered non-responsive.

The purpose of the pre-bid meeting is to discuss the requirements and objectives of this RFB, to answer any questions potential Bidders have about the RFB, and to answer any general questions about the Authority. At the pre-bid meeting the Authority will attempt to answer all questions received; however, reserving the right to answer any questions in writing in a subsequent addendum to the RFB. All prospective Bidders are encouraged to obtain and review the RFB documents prior to the pre-bid meeting in order to be prepared to discuss questions or concerns about the requirements of the Authority.

In order to conduct the pre-bid meeting as expeditiously and efficiently as possible, it is requested that all pre-bid questions be sent to the Purchasing Office contact indicated on the cover page of this RFB at least three (3) business days prior to the scheduled pre-bid meeting to allow staff time to research the questions.

A.07 COST OF PREPARATION

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

A.08 WITHDRAWAL OF BID

Bids may be withdrawn or revised by the Bidder for any reason prior to the date and time fixed for the public opening.

Negligence on the part of the Bidder in preparing its bid confers no right of withdrawal or modification after the date and time fixed for the public opening.

A.09 AMERICANS WITH DISABILITIES ACT NOTICE

The Authority does not discriminate against individuals with disabilities. Any person needing special accommodations to attend the bid opening or pre-bid meeting should contact the designated Procurement Agent indicated on the cover page of this solicitation document at least seven (7) days before the meeting.

A.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 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 federal or state law or applicable regulations, including but not limited to employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR, Part 21.

A.11 GENERAL CIVIL RIGHTS

The successful Bidder agrees to comply with the nondiscrimination provisions stated above in A.10 as well as other pertinent statutes, regulations, 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.

A.12 CALCULATIONS, ERRORS, OMISSIONS

All bids will be reviewed mathematically and, if necessary, corrected. In the event of multiplication/addition or extension error(s), the unit pricing will 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 Bidder’s submission will govern.

Bidders must fill in all information requested on the bid forms. All blanks on the bid forms must be completed. Where submitted bids have erasures or corrections, such erasures or corrections must be initialed in ink by the Bidder. Bids submitted on a form other than what is furnished herein, or bids submitted on the Authority’s bid form that is altered or detached, may be considered irregular. Bidders must fully comply with all requirements of this RFB in its entirety.

Bid Forms must be executed by an authorized signatory who has the legal authority to make the bid and bind the company.

A.13 DIRECT PURCHASE

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

A.14 TERMINATION FOR CONVENIENCE

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.

A.15 PUBLIC RECORDS AND DISCLOSURE

Bids and related information and materials received by the Authority are public records under Florida law, and will be subject to public inspection upon the issuance of the Authority's notice of intended decision, 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, Florida Statutes. If the Authority rejects all bids and concurrently notices its intent to reissue the solicitation, the rejected bids are exempt from public disclosure until the Authority provides notice of intended decision concerning the reissued solicitation or until the Authority withdraws the reissued solicitation. A bid is not exempt for longer than twelve months after the notice of rejection of all bids.

Pursuant to section 119.0701, Florida Statutes, to the extent a successful Bidder is performing services on behalf of the Authority, the successful Bidder 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. The Bidder 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 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 term of the Agreement and following completion of the Agreement if the successful Bidder does not transfer the records to the Authority.

Upon completion of the Agreement, 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 Bidder transfers all public records to the Authority at the completion of the Agreement, the successful Bidder must destroy any duplicate records that are exempt from public disclosure requirements. If the successful Bidder keeps any public records, it must 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.

In accordance with sections 119.071(3) and 331.22, Florida Statutes, airport security plans or other records relating directly to the physical security or fire safety of a public facility or revealing security or fire safety systems are confidential and exempt from public disclosure. For example, photographs, maps, blueprints, drawings, and similar materials that depict critical airport operating facilities are exempt, as well as building plans, blueprints, schematic drawings, and diagrams depicting the internal layout and structural elements of a public building or structure, all of which are exempt from disclosure under the provisions cited in this paragraph.

To the extent the law applies to the goods or services to be acquired through this RFB, Bidders agree to treat all such information as confidential and not to disclose it without prior written consent of the Authority.

A.16 TRADE SECRETS

As stated above in A.15, all documents, materials, and data submitted as a part of a response to this Request for Bids are governed by the disclosure, exemption and confidentiality provisions relating to public records as outlined in the Chapter 119, Florida Statutes. Under Florida law, designation of an entire bid as “trade secret,” “proprietary” or “confidential” is not permitted and may result in a determination that the bid is nonresponsive and therefore the bid will not be evaluated or considered.

Except for material that is considered a “trade secret” as defined by Chapter 812, Florida Statutes, all documents, materials and data submitted as part of a bid in response to this RFB become the property of the Authority.

The Authority does not believe that any of the information by this RFB constitutes a trade secret under Florida law. To the extent Bidder desires to maintain the confidentiality of any materials that it believes constitute trade secrets pursuant to Florida law, any trade secret material submitted as part of a bid must be segregated from the portions of the bid that are not declared as trade secrets. In addition the Bidder must cite, for each trade secret claimed, the Florida statute number that supports the designation of the information as a trade secret and include a brief explanation as to why the cited statute is applicable to the information claimed as trade secret. Additionally, Bidder must provide a copy of its bid that redacts all information designated as trade secret. In conjunction with any trade secret designation, Bidder acknowledges and agrees that:

- 1) Trade secret requests made after opening will not be considered. However, the Authority reserves the right to clarify the trade secret claim at any time;
- 2) By submitting a bid, all Bidders grant the Authority, its officials, employees, agents and representatives full rights to access, view, consider, and discuss the information designated as trade secret; and,
- 3) After notice from the Authority that a public records request has been made to inspect or copy all or any portion of Bidder’s bid, the Bidder, at its sole expense, will be responsible for defending its determination that the submitted material (or portions thereof) constitutes a trade secret under Florida law and is not subject to disclosure. Once the Authority notifies the Bidder that it has received a request to inspect or copy information that is designated a trade secret, the Bidder will take prompt action to respond to the request, but no later than 10 calendar days from the date of notification by the Authority, or Bidder will be deemed to have waived the trade secret designation of the materials.

Bidder agrees to indemnify, hold harmless and defend the Authority and its officials, employees, agents and representatives from any losses, claims, actions, damages (including attorney's fees and costs) and amounts arising or incurred by the Authority from or related to the designation of trade secrets by the Bidder, including but not limited to actions or claims arising from Authority's nondisclosure of the trade secret materials.

A.17 TAX EXEMPT

The Authority is generally a tax-exempt entity subject to applicable provisions of Florida law regarding sales tax. The successful Bidder will be responsible for complying with the Florida sales and use tax laws as may apply. The amount(s) of compensation set forth in any agreement resulting from this RFB, or in any change orders authorized pursuant to the agreement, will 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.

A.18 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 it is in the best interest of the Authority, in the Authority's sole judgment, and in conformance with applicable state and local laws or regulations.

The Authority further reserves the right to make inquiries, request clarification, require additional information and documentation from any Bidder, or cancel this solicitation and solicit for new bids at any time prior to the execution of an agreement. If a single response is received by the deadline for receipt of bids, it may or may not be rejected by the Authority depending on available competition and current needs of the Authority. The Authority reserves the right to take such actions as it deems necessary and in its best interests.

A.19 AUTOMATIC DISQUALIFICATION

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

- Failure to meet mandatory minimum qualifications stated herein.
- 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.
- Evidence that Bidder has a financial interest in the company of a competing Bidder.
- 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.

A.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, in its sole discretion, if Bidder is found to have submitted a false certification under section 287.135(5) Florida Statutes, 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; 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.

A.21 NO LOBBYING

All Bidders 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 are not to be lobbied, either individually or collectively, regarding this solicitation. During the entire procurement process, all Bidders and their subcontractors, agents, or other representatives are hereby placed on notice that they are not to contact any persons listed above (with the exception of the designated Purchasing Office contact indicated on the cover page of this RFB) if intending to submit or have submitted a bid for this project. All Bidders, subcontractors, and any agents must submit individual affidavits with their submissions 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 Bids. **Joint ventures must file a separate affidavit for each joint venture partner.**

ANY BIDDER IN VIOLATION OF THIS PROHIBITION WILL BE AUTOMATICALLY DISQUALIFIED FROM FURTHER CONSIDERATION FOR THIS REQUEST FOR BIDS.

A.22 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 successful Bidders 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.

A.23 RIGHT TO PROTEST

Any Bidder affected adversely by an intended decision to award any bid may file a written notice of intent to file a protest with the Purchasing Office but 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.

Details regarding the bid protest policy are contained within the Lee County Port Authority Purchasing Manual, which is available at www.flylcpa.com. **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.**

A.24 FINANCIAL RESPONSIBILITY

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

A.25 OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES

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

A.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, must be satisfied. To the extent that they differ from those of the Authority, the cost principles of the grantor will be used.

A.27 ESTIMATED QUANTITIES

If provided, estimated quantities indicated on the bid form are for bidding purposes only. The amount of actual purchase of the item(s), or the service(s) to be performed, described in this Request for Bids is neither guaranteed nor implied. Payment to the successful Bidder will be made only for the actual quantities of work performed or materials furnished.

A.28 NON-EXCLUSIVITY OF AGREEMENT

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

A.29 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 its 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 the 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.

A.30 FRONTLOADING BID PRICING PROHIBITED

If applicable, prices offered for performance and/or acquisition activities which occur early in the project schedule, such as mobilization; clearing and grubbing; or maintenance of traffic; that are substantially higher than pricing of competitive Bidders within the same portion of the project schedule, will be presumed to be front loaded. Front loaded bids could reasonably appear to be an attempt to obtain unjustified early payments creating a risk of insufficient incentive for the Bidder to complete the work or otherwise creating an appearance of an undercapitalized Bidder.

In the event the Authority presumes a bid to be front loaded, it will request the opportunity to, and reserves the right to, review all source quotes, bids, price lists, letters of intent, etc., which the Bidder obtained and upon which the Bidder relied upon to develop the pricing or acquisition timing for these bid items. The Authority reserves the right to reject as nonresponsive any presumptively front loaded bids where the Bidder is unable to demonstrate the validity and/or necessity of the front loaded costs.

A.31 PUBLIC ENTITY CRIMES

In accordance with section 287.133, 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 on a contract; 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 following the date of being placed on the convicted vendor list.

To ensure compliance with the foregoing, Bidders must 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.32 BID EVALUATION

Upon evaluation of all bids received, a notice of intent to award may be made to the lowest, responsive, and responsible Bidder whose bid(s) serves the best interests of the Authority, in the Authority's sole judgment and discretion.

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 goods and services in accordance with any agreement resulting from this RFB 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.

The recommendation for award of the agreement will be forwarded to the Airports Special Management Committee for review, and then to the Authority Board of Port Commissioners for decision.

A.33 EXECUTION OF AGREEMENT

The successful Bidder will be required to execute and return a service provider or other suitable agreement in substantially the attached form, unless amended during the bid process, within ten (10) calendar days from issuance of the notice of intent to award the bid. Failure of the successful Bidder to execute the agreement within ten (10) calendar days from the date the notice of intent to award is announced will constitute legal grounds for cancellation of the award and forfeiture of the bid bond.

Upon receipt of the agreement properly executed by the successful Bidder, the Authority shall submit the agreement for review and approval of the Board of Port Commissioners; 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, if applicable, to the Bidder. Delivery of the fully executed agreement to the Bidder will constitute the Authority's approval to be bound by the successful Bidder's bid and the terms and conditions of the agreement.

Until approval and final execution 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, in the Authority's sole judgment and discretion.

A.34 PAYMENT

Payment will be made in accordance with the awarded bid pricing for the goods and/or services completed and accepted 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 must include purchase order number or agreement number, as applicable, and must be submitted to Lee County Finance Department, PO Box 2463, Fort Myers, Florida, 33902.**

A.35 E-VERIFY

In accordance with section 448.095(2), Florida Statutes, the successful Bidder must register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

Furthermore, the successful Bidder's agreement with the Authority cannot be renewed unless at the time of renewal, the successful Bidder certifies to the Authority that it has registered with and uses the E-Verify system.

As applicable, if the successful Bidder enters into an agreement with a subcontractor, the subcontractor must provide the successful Bidder with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien and successful Bidder must maintain a copy of such affidavit for the duration of the agreement. If the successful Bidder develops a good faith belief that any subcontractor with which is it contracting has knowingly violated section 448.09(1), Florida Statutes (making it unlawful for any person knowingly to employ, hire, recruit, or refer, with for herself or himself, or on behalf of another for private or public employment with the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States), the successful Bidder must terminate the contract with the subcontractor. Failure to do so will result in termination of the agreement by the Authority.



If the Authority develops a good faith belief that the successful Bidder has knowingly violated sections 448.09(1) or 448.095(2), Florida Statutes (making it unlawful for any person knowingly to employ, hire, recruit, or refer, with for herself or himself, or on behalf of another for private or public employment with the state, an alien who is not duly authorized work by the immigration laws or the Attorney General of the United States) the Authority will terminate this agreement. Pursuant to section 448.095(2)(c)(3), Florida Statutes, termination of the agreement by the Authority, under the above circumstances is not a breach of contract and may not be considered as such.

[END OF PART A]

[Remainder of page intentionally left blank]

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 properly complete all bid forms.

B.01 MINIMUM QUALIFICATIONS

Bidders are required to meet the following minimum qualifications.

Bidders contracting in a corporate capacity must be registered with the Florida Department of State Division of Corporations as a Florida corporation or other Florida legal business entity in good standing and authorized to conduct business in the State of Florida. Foreign (i.e., non-Florida) companies that are properly registered with the Florida Department of State, Division of Corporations to conduct business in Florida will be deemed to meet the minimum qualifications. No documentation of registration and status is required, as the Authority will verify with the Division of Corporations.

All responding Bidders must provide evidence that it has been in continuous operation providing the services that are subject of this RFB for a minimum of three (3) years prior to the date the bid by providing reference information on Form 7 Professional References. The Authority will use this information to verify this minimum qualification has been met.

B.02 BASIS OF AWARD

The award will be made to the responsive and responsible Bidder having the lowest total base bid. The lowest bid will be based on the grand total of all three years of the base bid.

The lowest, responsible Bidder shall mean that Bidder who makes the lowest bid to sell goods and/or services of a quality, which meets or exceeds the quality of goods and/or services, set forth in the RFB documents or otherwise required by the Authority.

To be responsive, a Bidder must submit a bid which conforms in all material respects to the requirements set forth in the RFB.

To be a responsible Bidder, the Bidder must have the capability in all respects to perform fully the bid requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

The Authority reserves the right to make such an investigation as it deems necessary to determine the ability of any Bidder to furnish the service requested. Information that the Authority deems necessary to make this determination must be provided by the Bidder. Such information may include, but shall not be limited to, current financial statements, verification of availability of equipment and personnel, and past performance records.

B.03 BID PRICES

All bid prices submitted in response to this solicitation must include the cost of all labor, travel, equipment and supplies, per location specified.

B.04 INVOICING AND BILLING

Invoices must be itemized and must detail the work performed and accepted by the Authority. At a minimum, the invoice will indicate generator PC number, maintenance that was performed.

B.05 TERM OF SERVICE PROVIDER AGREEMENT

The Authority intends to enter into a Service Provider Agreement with the successful Bidder for an initial term of three (3) years, with the option to renew for an additional one (1) two (2) year period if mutually agreed by the parties. The total contract duration will not exceed 5 years. If the renewal option is exercised, it will be under the same terms and conditions and pricing schedule as year 3 on the bid form.

B.06 AIR OPERATIONS AREA (AOA) SECURITY MAINTENANCE

The work performed by the successful Bidder must be executed in a professional manner.

Employees of the successful bidder or subcontractors who work within the Air Operations Area (AOA) at Southwest Florida International Airport must qualify for and obtain airport-issued identification badges which must be worn at all times while within the AOA. Badges shall be worn on outer, uppermost garments so as to be clearly visible in order to distinguish, on site, employees assigned to a particular Provider. Badges shall be issued individually. Drivers of delivery or hauling vehicles will not require badges but must be under the escort of a properly badged employee.

The successful Bidder must, provide a qualified and competent person onsite with the ability to converse in English, to understand and carry out instructions and having the authority to supervise the operations and to represent and act on behalf of the successful Bidder.

It is the successful Bidder's responsibility and obligation to train its employees to be able to identify and understand all signs and notices in and/or around the work areas that relate to them or the services being performed by them under the Agreement. In addition, the successful Bidder must have someone in attendance at all times who can communicate instructions to its employees.

The successful Bidder will promptly remove from the project any employee or employees that the Authority advises are not satisfactory, and replace such personnel with employees satisfactory to the Authority; however in no event shall Authority be responsible for monitoring or assessing the suitability of any employee or agent of the successful Bidder.

All articles found by the successful Bidder's employees on Authority premises shall be turned over to the Authority or the Authority's designated agent in charge of such articles.

A valid driver license (Commercial Driver License, if applicable) will be required of all personnel operating motor vehicles or motorized equipment on roadways in or around the Airport property. Each motor vehicle brought onto the Authority's premises shall have the successful Bidder's business name and/or logo prominently displayed on the vehicle.

While working on Authority property, all employees will wear neat and clean clothing and footwear of a style that complies with all legal and safety requirements, including and without limitation, the requirements of OSHA.

B.07 WARRANTY

The successful bidder must warrant that for a period of one year from the date of performance and final acceptance, all work, materials, and equipment furnished must be guaranteed and warranted to be free from defects due either to faulty materials or equipment and poor workmanship.



During the warranty period the Authority may issue written notice requiring the successful bidder to repair or replace any defective materials, equipment or workmanship at its cost. From the date of the written notice, successful bidder shall repair or replace the defective materials, equipment or workmanship, at its sole expense, within thirty days. Alternatively, Authority may return the defective goods at successful bidder's expense, for a full refund. Exercise of either option shall not relieve successful bidder of any liability to Authority for damages sustained by virtue of successful bidder's breach of the warranty.

[END OF PART B]

[Remainder of page intentionally left blank]

PART C
SCOPE OF SERVICES

C.01 PURPOSE

The Authority seeks a qualified Bidder to perform Generator Inspections and Maintenance Services for the Lee County Port Authority. All work described herein must be in accordance with the requirements of the RFB. Inspections will be performed once annually, and must be completed before the month of May throughout the duration of the contract.

C.02 SERVICE LOCATIONS

This service agreement will include the following twelve (12) generators located at the Southwest Florida International Airport.

Unit 1

PC# 5443
Brand- Kohler
Model# 400RE0ZV0
Serial # 2135443
Engine- Volvo Penta
Engine Model-TAD1242GE
Engine Serial #-D12-*606470*D1*A
Belt Number (s) 3883978, 978207
Voltage- 3Phase
Frequency- 60Hertz
Fuel – Diesel

Location

Air Field - Vault 2
11800 Regional Lane
Ft. Myers, Fl. 33913

Unit 2

PC# 9771
Brand- Kohler
Model- 450RE02D4
Serial Number-789771
Engine- Detroit Diesel
Belt Number (s) -GM16809
Voltage- 3 Phase
Frequency – 60 Hertz
Fuel - Diesel

Location

Air Field Vault 1
11800 Regional Lane
Ft. Myers, Fl. 33913

Unit 3

PC# 3136
Brand - Cummins
Model - 1100DFLB-4011
Serial Number - J030563136
Engine – Cummins
Engine Serial # 563136
Belt Number (s) -0511-0161-03, 0511-0119
Voltage- 3 Phase
Frequency- 60 Hertz
Fuel - Diesel

Location

RSW Terminal
Concourse “B”
11000 Terminal Access Road
Ft. Myers, Florida 33913



Unit 4

PC# 3137
Brand - Cummins
Model - 1100DFLB-4011
Serial Number -J030563137
Engine – Cummins
Engine – KTA50-G2
Engine Serial# 563137
Belt Number(s)- 0511-0161-03, 0511-0119
Voltage – 3 Phase
Frequency – 60 Hertz
Fuel - Diesel

Location

RSW Terminal
Concourse “C”
11000 Terminal Access Road
Ft. Myers, Florida 33913

Unit 5

PC #8805
Brand - Cummins
Model - 600DFGB-4186
Serial Number- B040598805
Engine – Cummins
Engine Model – VTA-28-G5
Engine Serial #- 598805
Belt Number (s)- 178578, 0511-0105
Voltage – 3 Phase
Frequency- 60 Hertz
Fuel - Diesel

Location

RSW Parking Garage
11000 Terminal Access Road
Ft. Myers, Florida 33913

Unit 6

PC #8746
Brand - Cummins
Model - DGDA-5641137
Serial Number - L030578746
Engine – Cummins
Engine Model - 6BT5.9-G6
Engine Serial #- 46355817
Belt Number (s)- 3288724
Voltage- 3 Phase
Frequency – 60 Hertz
Fuel - Diesel

Location

SP Parking Garage and Toll Gate
11031 Terminal Access Road
Ft. Myers, Fl. 33913

Unit 7

PC # 6731
Model - DSKCA-5685069
Serial Number - H100146731
Engine – Kubota
Engine Model – V3300
Engine Serial # - 9Y1096
Belt Number(s) – 3495, 9505
Voltage – 3 Phase
Frequency – 60 Hertz
Fuel - Diesel

Location

Waste Water Treatment Plant
15499 Air Cargo Lane
Ft, Myers, Fl. 33913



Unit 8

PC# 3476
Brand - Kohler
Model - 600REOZV
Serial Number - 2333476
Engine – Volvo Penta
Engine Model - TWD1643GE
Engine Serial #- BUPXL16.1ACW
Belt Number(s) – 3883978, GM41468

Location

Fire House (ARFF)
17211 Perimeter Road
Ft. Myers, FL 33913

Unit 9

PC # 0009
Brand- Baldor
Model- TS175T
MODEL#TS175T 0005
Serial Number - P0609200009
Engine – John Deere
Engine Model - 6081TF001C
Engine Serial# - 2JDXL08.1009
Belt Number (s) - R135589
Voltage – Selector Switch
Frequency- 60 Hertz
Fuel – Diesel

Location

Portable
Vehicle Maintenance Building
15910 Air Cargo Lane
Ft. Myers, Fl. 33913

Unit 10

PC# 3135
Brand - Cummins
Model - 1250DFLC-4010
Serial Number - J030563135
Engine – Cummins
Engine Model - KTA-50-G3
Engine Serial# - 563135
Belt Number(s) - 0511-0161-03, 0511-0119, 0511-0161-10
Voltage – 3 Phase
Frequency – 60 Hertz
Fuel – Diesel

Location

RSW Terminal”
Concourse “D”
11000 Terminal Access Road
Ft. Myers, Florida 33913

Unit 11

PC# 9881
Brand – Generac
Model – 0052840
Serial Number – 4789881
Engine Model - OG3506
Engine Serial # - 8204569
Belt Number(s) – No belt is required for this generator
Voltage – 1 Phase
Frequency – 60 Hertz
Fuel - LPG

Location

SP & Long Term Booth
11031 Terminal Access Road
Ft. Myers, Fl. 33913

Unit 12

PC # 0005
Brand – Baldor
Model - TS35T
Serial Number - P0612210005
Engine – John Deere
Engine Model - 4024TF270D
Engine Serial # - 6JDXL02.4074
Belt Number (s) - R517041
Voltage – Selector Switch
Frequency – 60 Hertz
Fuel – Diesel

Location

Portable
Vehicle Maintenance Building
15910 Air Cargo Lane
Ft. Myers, Fl. 33913

C.03 ANNUAL SERVICE AND INSPECTIONS

Annual inspections will consist of the following:

- Engine Oil Level and Condition
- Coolant Level and Condition
- Engine Belts
- Governor
- Fuel Filter and Sediment Bowls
- Ignition System
- Injection Pump and Injector Leakage
- Fuel Lines and Tank
- Coolant Protection Level
- Coolant System and Hoses
- Engine Air Cleaner
- Air Intakes and Outlet
- Exhaust Condition and temperature
- Load Lead Connector
- Battery Charger Operation and Rate
- Battery Condition
- Electrolyte Level and Specific Gravity
- Battery Cable and Connection
- Transfer Switch Operation/Maintenance/Adjustment
- Circuit Breaker
- Transfer Switch Light and Indicator
- Ventilation – Louvers and Shutters
- Engine and Generator Gauge Operation
- Engine Alternator Charge Rate
- Electrical Connection
- Piping Connection
- Control Panel Lights
- Fuel Level Indicators
- Generator Voltage Output
- Generator Amperage
- Engine Wiring Harness
- Engine Heater Operation
- Timer Operation

- Monitors and Safety Controls
- Vibration Isolators
- Rear bearing Lube
- Emergency Power Transformers

At each annual inspection, Bidder will issue a written report using NFPA 110 Maintenance Schedule Form with tasks that have been performed for each unit for the date serviced. The report will indicate condition of the unit, recommended tasks designed to ensure that the equipment is in optimum condition, so that the equipment will operate effectively, reliably and efficiently during demand, and a cost estimate for the recommended tasks.

An annual inspection service must also include a (4) hour load bank test per generator that must be scheduled in advance, lubrication oil and filtration service, operational and functional review of generator components. Change engine oil, oil filters and fuel filters. Bidder will install new belt sets for all generators from LCPA stock, and provide one new belt set per generator for spare belts on hand.

All parts used in the performance of this agreement shall be new and meet OEM specifications.

C.04 SITE VISIT

A site visit can be arranged for inspection of the various site locations and equipment between the hours of 8:00 a.m. and 3:00 p.m. Call Megan Bowman at 239-590-4558 for an appointment.

C.05 WORKING HOURS

Services will be performed between the hours for 7:00A.M. – 3:30 P.M. Monday through Friday, excluding weekends and Authority observed holidays. Any work performed outside of these hours must be first approved by the Authority.

The Successful Bidder will coordinate a schedule with the Authority, subject to Authority approval. The schedule must indicate the exact time the inspection will occur at each location. Inspections will be performed in accordance with the approved schedule without delay and conducted until completion. Scheduled repairs will not be performed until approved by the Authority.

C.06 CLEAN UP

The successful Bidder will remove all unusable materials and debris from the work areas at the end of each workday, and dispose in an appropriate manner. Upon completion, the successful Bidder must thoroughly clean up all areas where work has occurred.

C.07 ADDITIONAL LOCATIONS

Although this solicitation and resultant contract identify specific locations to be serviced, it is hereby agreed and understood that the Authority may add locations to the contract at the option of the Authority, for similar or related services. The successful Bidder will be invited to provide pricing for additional locations. If the pricing is acceptable to the Authority, the new locations will be added to the contract by a contract amendment. The Authority may obtain service for the additional locations from others in the event fair and reasonable pricing is not obtained from the successful Bidder, or for other reasons, at the Authority's discretion. The Authority will also have the right to delete any location from this contract, upon written notification to the successful Bidder.

[END OF PART C]



PART D
PLANS, DRAWINGS, PHOTOGRAPHS, ETC

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[END OF PART D]



**PART E
RESERVED**

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[END OF PART E]



PART F

INSURANCE AND INDEMNIFICATION REQUIREMENTS

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 Bidder’s ability to obtain the insurance coverage as stated herein, should be submitted with the bid.

No agreement will be approved or entered into pursuant to this Request for Bids until all insurance coverage(s) indicated herein has been obtained. The cost for obtaining insurance coverage is the sole responsibility of the successful Bidder. The successful Bidder must obtain and submit to the Purchasing Office within five (5) calendar days from the date the notice of intent to award is issued, proof of the following minimum amounts of insurance on a standard ACORD form. The insurance provided will include coverage for all parties employed by the Bidder. At the discretion of the Authority, all insurance limits may be re-evaluated and revised at any time during the term of the Agreement.

Insurance Requirements (Types and Limits)

Commercial General Liability, including premises, operations, airside automobile, bodily injury, personal injury, property damage, and contractual liability, is required. Successful bidder must provide the following types of insurance with minimum limits as indicated:

Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$50,000	Fire Damage
	\$5,000	Medical Expenses

Such insurance must be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Business Automobile Liability (which includes coverage of any auto, including owned, hired, and non-owned) is required.. Successful bidder must provide the following types of insurance with minimum limits as indicated:

Automobile Liability	\$5,000,000	Combined Single Limit
-----------------------------	-------------	-----------------------

Such insurance must be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements. An Excess Liability or Umbrella policy can be used to satisfy the above limits.

Workers' Compensation insurance as required by the State of Florida, and Employers' Liability insurance is required. Successful bidder must provide the following types of insurance with minimum limits as indicated:

Worker’s Compensation Employer’s Liability	Florida Statutory Coverage	
	\$1,000,000	Each Accident
	\$1,000,000	Disease Policy Limit
	\$1,000,000	Each Employee/Disease

This insurance must cover the Bidder (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the

standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements).

The successful Bidder must resolve all claims arising out of any incident or accident during the performance of the "work" or operations performed that involve property damage and/or injury.

Additional Insured

The Authority must be named as an additional insured on all policies except for workers' compensation. The policy must be endorsed to include the following 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 insured, including materials, parts or equipment furnished in connection with such Work or Operations."

Acceptability of Insurers

Insurance is to be placed with insurers duly licensed and authorized to do business in the State of Florida and with an AM 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 successful Bidder from potential insurer insolvency.

Waiver of Subrogation

Insurance will be primary and noncontributory and will include a Waiver of Subrogation by both the successful Bidder 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 is in effect, the successful Bidder will 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. The firm's current insurance certificate or a statement from the firm's insurance company verifying the successful Bidder's ability to obtain the insurance coverage as stated herein, should be submitted with the bid. The appointed insurance agent or carrier will be duly licensed to provide coverage and honor claims within Florida. Please send the certificate of insurance with Lee County Port Authority as certificate holder to riskmanagement@flylcpa.com.

The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory.

Policy on Request

If requested in writing by the Authority, the successful Bidder will provide the Authority with a certified copy of all applicable insurance policies required by this RFB and any agreement entered into with the Authority.

Change in coverage

The successful Bidder is required to provide a minimum of thirty (30) days written notice to the Authority Risk Manager of any cancellation, nonrenewal, termination, material change, or reduction of any coverage required herein. All such notices will be sent directly to Lee County Port Authority Risk Manager, 11000 Terminal Access Road, Suite 8671, Fort Myers FL, 33913.

If the successful Bidder fails to provide the requisite notice, the Authority may terminate any agreement(s) with the successful Bidder.

Subcontractor's requirement

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

Sovereign Immunity

The successful Bidder understands and agrees that by entering an Agreement with Bidder, the Authority does not waive its sovereign immunity and nothing herein will 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 Bidder will defend, indemnify, and hold harmless 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 Bidder, or anyone performing any act required in connection with performance of any Agreement awarded pursuant to this RFB.

The successful Bidder represents that it knows of no allegations, claims, or threatened claims that the services, materials, or information that it proposes to be provided to the Authority under this RFB infringe any patent, copyright, or other proprietary right. The successful Bidder will defend, indemnify and hold harmless the County and the Authority, and their respective Boards, Commissioners, employees, agents and other representatives of, from and against all losses, claims, damages, liabilities, costs, expenses and amounts arising out of or in connection with an assertion that any Bidder's services, materials or information to be provided or the use therefore, infringe any patent, copyright or other proprietary right of any third party.

The successful Bidder's obligations to defend, indemnify and hold harmless the County and the Authority, and their respective Boards, Commissioners, employees, agents and other representatives, as stated in this section, will apply and extend to the performance of any services by Bidder to the Authority as contained in the bid and any negotiated agreement(s), and these obligations survive termination or the completion of the services contracted for, whether partially or fully performed.

[END OF PART F]



PART G – FORMS

Note: This form must be submitted with the Bidder’s bid submittal

FORM 1: BIDDER’S CERTIFICATION

I have carefully examined the entirety of this Request for Bids (RFB) which includes Instructions for Bidders, Special Instructions and Requirements, Scope of Services, and Insurance and Indemnification Requirements. I acknowledge receipt and incorporation of the following addenda. The cost, if any, of such revisions has been included in my bid pricing.

Addendum No. ___; dated _____. Addendum No. ___; dated _____.
 Addendum No. ___; dated _____. Addendum No. ___; dated _____.

I propose to perform the work/offer the items described in this RFB and I agree to hold pricing for at least 120 calendar days to allow the Authority time to properly evaluate this bid. I agree 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

Notary Public – State of _____
 County of _____

Sworn to and subscribed before me by means of physical presence or online notarization this _____ day of _____, 20__.

Personally known _____ or produced identification _____
 (Type of identification) _____

 Printed typed or stamped commissioned name of Notary Public



FORM 2: OFFICIAL BID FORM

BID NO. **RFB 21-33MLB**

BIDDER'S NAME: _____

BIDS ARE DUE ON: **THURSDAY, AUGUST 5, 2021**

PRIOR TO **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 solicitation documents, agrees to furnish all labor, materials, equipment, and other incidental items, and services necessary to perform:

Generator Inspection and Maintenance for the Southwest Florida Airport

in full accordance with the solicitation and contract documents and all other documents related thereto on file in the Purchasing Office and, if awarded the bid, to complete the said work within the time limits specified for the pricing awarded, which is based on the following bid schedule:



FORM 2: OFFICIAL BID FORM (CON'T)

ITEM 1: INSPECTIONS SERVICE(S)

Unit Number	Year One/Per Inspection	Year Two/Per Inspection	Year Three/Per Inspection
Unit 1 –PC# 5443	\$	\$	\$
Unit 2 – PC# 9771	\$	\$	\$
Unit 3 – PC# 3136	\$	\$	\$
Unit 4 – PC# 3137	\$	\$	\$
Unit 5 – PC# 8805	\$	\$	\$
Unit 6 – PC# 8746	\$	\$	\$
Unit 7 – PC# 6731	\$	\$	\$
Unit 8 – PC#3476	\$	\$	\$
Unit 9 – PC#0009	\$	\$	\$
Unit 10- PC#3135	\$	\$	\$
Unit 11- PC#9881	\$	\$	\$
Unit 12- PC#0005	\$	\$	\$
TOTAL ANNUAL COST	Year 1 \$	Year 2 \$	Year 3 \$
Grand Total (Sum of Years 1 – 3) \$			



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 Request for Bids from Lee County Board of Port Commissioners, members of the Airports Special Management Committee or employees of Lee County Port Authority, individually or collectively, regarding this Request for Bids. The prospective Bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. section 1352, 49 CFR Part 20 and Lee County Ordinance No. 03-14 relating to lobbying activities.

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 produced _____ as identification by means of physical presence or on line notarization.

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 BIDDERS 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 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 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____, by _____ by means of physical presence or online notarization 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 5: SCRUTINIZED COMPANIES CERTIFICATION

Bidder hereby certifies under penalties of perjury as of the date of submission of its RFB to provide goods and services to 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 Statutes, that result in Bidder being placed on the Scrutinized Companies that Boycott Israel List, during the term of any contract awarded pursuant to this Request for Bids.

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 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 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 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 _____ by means of physical presence or online notarization 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:



FORM 6: LOCAL PREFERENCE AFFIDAVIT (Continued)

- Not a Local Vendor as defined by Lee County Ordinance 00-10, as amended by Lee County Ordinance 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____, by

_____ by means of physical presence or online
notarization 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]

[Remainder of page intentionally left blank]

Title of Solicitation:Generator Inspections for the Lee County Port Authority

RFB-20-33MLB

		LJ Power Generators Inc			Metro Power Systems			Taylor Sudden Service Inc.		
	Minimum Qualifications Met	YES			YES			YES		
	1. Bidder Registerd with ther State of Florida	✓			✓			✓		
	2. Bidder has 3 years of continuous operating history	✓			✓			✓		
Form 1	Bidder's Certification	✓			✓			✓		
Form 2	Official Bid Form- Grand total of Inspections for Years 1-3	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3
	Unit 1 –PC# 5443	\$ 1,700.00	\$ 1,700.00	\$ 1,700.00	\$ 3,430.83	\$ 3,430.83	\$ 3,430.83	\$ 2,233.00	\$ 2,261.00	\$ 2,290.00
	Unit 2 – PC# 9771	\$ 1,700.00	\$ 1,700.00	\$ 1,700.00	\$ 3,352.33	\$ 3,352.33	\$ 3,352.33	\$ 2,266.00	\$ 2,294.00	\$ 2,323.00
	Unit 3 – PC# 3136	\$ 2,800.00	\$ 2,800.00	\$ 2,800.00	\$ 4,246.29	\$ 4,246.29	\$ 4,246.29	\$ 5,490.00	\$ 5,583.00	\$ 5,679.00
	Unit 4 – PC# 3137	\$ 2,800.00	\$ 2,800.00	\$ 2,800.00	\$ 4,246.29	\$ 4,246.29	\$ 4,246.29	\$ 5,490.00	\$ 5,583.00	\$ 5,679.00
	Unit 5 – PC# 8805	\$ 2,250.00	\$ 2,250.00	\$ 2,250.00	\$ 3,591.25	\$ 3,591.25	\$ 3,591.25	\$ 3,045.00	\$ 3,089.00	\$ 3,134.00
	Unit 6 – PC# 8746	\$ 1,140.00	\$ 1,140.00	\$ 1,140.00	\$ 2,726.91	\$ 2,726.91	\$ 2,726.91	\$ 1,315.00	\$ 1,334.00	\$ 1,353.00
	Unit 7 – PC# 6731	\$ 1,140.00	\$ 1,140.00	\$ 1,140.00	\$ 2,794.58	\$ 2,794.58	\$ 2,794.58	\$ 1,245.00	\$ 1,262.00	\$ 1,280.00
	Unit 8 – PC#3476	\$ 2,250.00	\$ 2,250.00	\$ 2,250.00	\$ 3,320.98	\$ 3,320.98	\$ 3,320.98	\$ 2,968.00	\$ 3,009.00	\$ 3,052.00
	Unit 9 – PC#0009	\$ 1,340.00	\$ 1,340.00	\$ 1,340.00	\$ 2,633.74	\$ 2,633.74	\$ 2,633.74	\$ 1,470.00	\$ 1,573.00	\$ 1,594.00
	Unit 10- PC#3135	\$ 3,800.00	\$ 3,800.00	\$ 3,800.00	\$ 4,246.29	\$ 4,246.29	\$ 4,246.29	\$ 6,375.00	\$ 6,490.00	\$ 6,608.00
	Unit 11- PC#9881	\$ 845.00	\$ 845.00	\$ 845.00	\$ 2,719.65	\$ 2,719.65	\$ 2,719.65	\$ 1,021.00	\$ 1,032.00	\$ 1,043.00
	Unit 12- PC#0005	\$ 1,025.00	\$ 1,025.00	\$ 1,025.00	\$ 2,565.03	\$ 2,565.03	\$ 2,565.03	\$ 1,287.00	\$ 1,305.00	\$ 1,324.00
	TOTAL ANNUAL COST	\$ 22,790.00	\$ 22,790.00	\$ 22,790.00	\$ 39,874.17	\$ 39,874.17	\$ 39,874.17	\$ 34,205.00	\$ 34,815.00	\$ 35,359.00
	Grand Total	\$ 68,370.00			\$ 119,622.51			\$ 104,379.00		
Form 3	Lobbying Affidavit	✓			✓			did not fill out form		
Form 4	Public Entity Crimes Form	✓			✓			✓		
Form 5	Bidder's Scrutinized Companies Certification	✓			✓			✓		
Form 6	Local Vendor Preference Affidavit	✓			✓			✓		
	Current Insurance Certificate - Within 15 days of notification									
	Current State of Florida Licenses/Certifications									
	SunBiz status									
NOTES								Vendor's Year One on the bid form did not add up correctly		

Procurement Summary

RFB 21-33MLB: Generator Inspections and Maintenance for the Lee County Port Authority

NOTICE OF INTENDED DECISION

On July 6, 2021 Lee County Port Authority released Request for Bid (RFB) 21-33MLB for Generator Inspections and Maintenance for Lee County Port Authority. The services require the successful bidder to furnish all labor, equipment and tools to perform generator inspections in accordance with the requirements stated in the solicitation documents for a term of three years with the option to renew for one additional 2-year period.

The RFB was broadcast through the Lee County Port Authority website, Airport Minority Advisory Council, Airports Council International, Florida Airports Council and in IonWave, the Authority's e-procurement system.

IonWave electronically notified 70 potential bidders. Three (3) bidders submitted a bid for consideration, including:

- LJ Power, Inc., Austin, TX*
- Metro Power Systems, Fort Myers, FL*
- Taylor Sudden Service, Fort Myers, FL*

The Procurement Agent reviewed each of the bids for responsiveness to the requirements of the RFB. All bids have been deemed responsive.

In accordance with the solicitation documents, the award will be made to the responsive and responsible bidder having the lowest total base bid. To be eligible for award, a bid must be responsive, meaning the bid conforms in all material respects to the requirements set forth in the RFB.

The bid submitted by LJ Power, Inc. has been evaluated and deemed the lowest, responsive, bid. LJ Power, Inc. is a responsible bidder submitting the bid with the lowest grand total. Bid pricing submitted by LJ Power, Inc. is much lower than the two other bids received, however the pricing is in line with what the Authority expected to pay based on the costs currently incurred by the Authority for the same service.

A written recommendation to award to LJ Power, the lowest, responsive and responsible bidder was received by the Aviation Department.

Upon review by the Airports Special Management Committee, this notice will serve as Lee County Port Authority's intended decision to award a contract to LJ Power, Inc. for generator inspections and maintenance for Lee County Port Authority.

Approved.

Melissa M. Wendel, CPPO, CPP-NIGP
Procurement Manager

Date: _____

Contract Number 9190
Vendor Number 469971

**LEE COUNTY PORT AUTHORITY
SERVICE PROVIDER AGREEMENT**

RFB 21-33

**GENERATOR INSPECTIONS AND MAINTENANCE FOR THE
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT**

THIS AGREEMENT is entered this _____ day of _____, 2021, 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 LJ POWER, INC., a Texas corporation entity authorized to transact business in the State of Florida ("PROVIDER"), whose business address is 12707 Nutty Brown Rd., Bldg. F, Austin, TX 78737, FEI/EIN Number 47-1048260 (collectively, the Authority and Provider are referred to throughout this Agreement as the "Parties").

WITNESSETH

WHEREAS, the Authority desires to contract with Provider to furnish all labor, equipment and tools to perform generator inspections in accordance with the requirements stated in the solicitation documents at Southwest Florida International Airport and/or Page Field in Fort Myers, Florida, as specified in Request for Bid (RFB) 21-33; and,

WHEREAS, Provider has reviewed the services and products required under RFB 21-33 and this Agreement, has submitted a bid agreeing to provide the requested services, and states that it is qualified, willing and able to provide the products and perform all such services required according to the provisions, conditions and terms below and in accord with all governing federal, state and local laws and regulations; and,

WHEREAS, 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 and products to be provided under this Agreement; and,

WHEREAS, Provider has been selected to provide the services and products described below as the result of a competitive selection process by Authority in accord with 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 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 WORK/SERVICES

Provider hereby agrees to perform the services and/or provide the products set out in Part C of RFB 21-33, entitled "Scope of Work/Services", which is merged into and incorporated by reference as part of this Agreement ("Scope of Work/Services"). Provider agrees to perform in strict accordance with the Scope of Work.

No services may commence until Authority issues a purchase order, unless otherwise set out in the Scope of Work/Services or elsewhere in the RFB.

3.0 REQUEST FOR BIDS AND PROVIDER'S BID – INCORPORATION BY REFERENCE

The terms of the RFB, 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 RFB 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 perform the required services and provide the products 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) year(s). The Authority will have the option to extend the term of this Agreement, upon consent of Provider and upon the same terms and conditions, for one (1) additional two (2) year term. The Authority may exercise each option by giving Provider notice of its intent to renew at least thirty (30) days prior to expiration of the current term.

5.0 LICENSES

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 Provider.

6.0 PERSONNEL

Provider agrees that when the services and products to be provided and performed relate to a professional service which, under Florida law, 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.

Services performed and products to be provided under this Agreement will be performed and delivered by Provider's own staff or by persons selected by Provider to perform the services and provide the products required, according to the processes outlined in the Scope of Work, unless agreed in advance by the Authority.

7.0 STANDARDS OF SERVICE

Provider agrees to provide all products and perform all services under this Agreement in strict accordance with RFB 21-33 as well as all generally accepted standards of practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agency that regulates or has jurisdiction over the services and products to be provided by the Provider.

8.0 COMPENSATION AND PAYMENT SCHEDULE

8.1 The Authority will pay Provider for all requested and authorized services and products in accordance with the terms of this Agreement and the Scope of Work, based on the pricing and compensation terms described in the Scope of Work.

8.2 Provider will submit invoices to the Authority according to the Scope of Work. The monthly invoice will cover services rendered and completed and products delivered and installed during the preceding payment period. Provider will submit the invoices to the Authority's Finance Department. Provider's invoice(s) must be itemized to correspond to the basis of compensation as set forth in this Agreement, as may be amended, and the Scope of Work. Invoices will include an itemized description of the project, the amount of time expended, and a description of the services and products provided. Provider's failure to follow these instructions may result in an unavoidable delay of payment by the Authority; however, such delay in payment will not be considered a violation of the Authority's obligations under the Agreement.

8.3 PAYMENT SCHEDULE - The Authority will issue payment to the Provider within thirty (30) calendar days after acceptance of the services and products 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. Should the Authority object or take exception to the amount of any Provider's invoice, the Authority will notify

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 will withhold the disputed amount and make payment to Provider of all amounts not in dispute. The Parties agree to negotiate informally regarding any disputed amount.

8.4 **TRAVEL/DIRECT COSTS** - Provider may invoice Authority for the actual cost of express mail, printing, long distance telephone and other direct cost approved by the Authority in advance and in writing. In addition, Provider may be reimbursed for travel expenses incurred on Authority's behalf that comply with Section 112.061, Florida Statutes, and that have been approved by Authority in advance and in writing.

9.0 ANNUAL APPROPRIATIONS

All funds for payment by the Authority under this Agreement are subject to the availability of an annual appropriation for this purpose. In the event of non- appropriation of funds by the Authority for the services and products provided under this Agreement, the Authority will terminate this Agreement, without termination charge or other liability, on the last day of the then-current fiscal year or the date funds for goods or services covered by this Agreement are spent, whichever occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation will be accepted by Provider on thirty (30) days prior written notice, but failure to give such notice will be of no effect and the Authority will not be obligated under this Agreement beyond the date of termination.

10.0 FAILURE TO PERFORM

If Provider fails to commence, provide, perform and/or complete any of the services or products or any 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 Provider, not to exceed the amount of the compensation for the work in dispute, until such time as Provider resumes performance of its obligations in accordance with the time and schedule of performance requirements set forth in this Agreement and the Scope of Work.

11.0 INDEMNIFICATION AND HOLD HARMLESS

Provider agrees to be liable for, and will 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 Provider's services or provision of products 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.

Provider understands and agrees that by entering into this Agreement, the Authority does not waive its sovereign immunity and nothing herein will be interpreted as a waiver of the Authority's rights, including the limitation of waiver of immunity in Section 768.28, Florida Statutes or any other statutes, and the Authority expressly reserves these rights to the fullest extent allowed by law. Provider's indemnification obligations as stated in this Agreement and in RFB 21-33 shall survive termination or completion of the services contracted hereunder.

12.0 AUTHORITY'S REPRESENTATIVE

The Contract Management Department, and/or the Authority Purchasing Manager, will administer this Agreement for Authority.

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

(2) **Building Plans** - Provider further acknowledges that Section 119.071(3)(b)1., Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building or other structure owned or operated by the Authority or Lee County from the disclosure requirements of the Florida Public Records Law.

(3) **Airport Security and Firesafety Systems** - Section 281.301, Florida Statutes, exempts information relating to the security or firesafety systems for any property owned by or leased to the Authority and any information relating to the security or firesafety 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 or portions thereof relating directly to or that would reveal such systems or information, is confidential and exempt from disclosure.

As used in this paragraph, the term “security or fire safety system plan” also includes 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 in the course of judicial or legislative proceedings where such information has been properly subpoenaed or ordered by a court of competent jurisdiction to provide, any confidential or exempt information concerning the services to be rendered by Provider under this Agreement. Provider will require all of its employees, agents, subcontractors to comply with the provisions of this Article.

14.0 PROVIDER'S PUBLIC RECORDS OBLIGATIONS

Provider specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and will:

- 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;
- 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;
- 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
- 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 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, SUITE 8671, FORT MYERS, FLORIDA 33913, publicrecords@flylcpa.com; http://www.flylcpa.com/public_records.

15.0 AIRPORT SECURITY REQUIREMENTS

Provider 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. Provider may need access to these secure areas to complete the work required by this Agreement.

Provider 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 for breaches of security rules and regulations by Provider, its agents, employees, subcontractors, or invitees.

Provider further acknowledges that its employees and agents 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 Provider agent, employee, subcontractor, or invitee, Provider will notify the Airports Police Department that Provider's access authorization or that of any of Provider's agents, employees, subcontractors, or invitees has changed. Provider 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 Provider agent, employee, subcontractor, or invitee, Provider will surrender any Airport Security Identification Badge held by Provider or by Provider's agents, employees, subcontractors, or invitees. Should Provider fail to surrender these items within five (5) days, Provider will be assessed a fee of One Hundred Dollars (\$100.00) or other applicable fee in effect at that time per identification badge not returned. This fee will be billed to Provider or deducted from any money owing to Provider, at the Authority's discretion.

16.0 INSURANCE

During the term of this Agreement, Provider will provide, pay for, and maintain, with companies satisfactory to Authority, the types of insurance described in RFB 21-33 and as stated in this Agreement. Promptly after execution of this Agreement by the Parties, Provider must obtain insurance coverages and limits required as set out below. Provider further agrees to provide Authority's Risk Manager with a certificate of insurance indicating that all policies have been endorsed to provide 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 will 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 will be from responsible companies duly authorized to do business, provide coverage, and honor claims in 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, the Authority in no way warrants that the required minimum insurer rating is sufficient to protect Provider from potential insurer insolvency.

The acceptance by the Authority of any Certificate of Insurance evidencing the insurance coverage and limits required in this Agreement does not constitute approval or agreement by the Authority that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance comply with the requirements of this Agreement.

All of Provider's insurance coverage will be primary and non-contributory to any insurance or self-insurance program carried by the Authority and applicable to work under this Agreement and will include a waiver of subrogation in favor of the Authority.

No work will commence, or any services or products be provided, under this Agreement unless and until the required Certificates of Insurance are received and approved by the Authority.

16.1. INSURANCE REQUIRED (Types and Limits)

Commercial General Liability, including premises, operations, airside automobile, bodily injury, personal injury, property damage, and contractual liability, with a minimum combined single limit of \$1 million, and products-completed operations, with a minimum limit of \$2 million aggregate. Coverage must include the following: All premises and operations, products- completed operations, independent contractors, separation of insured, defense and contractual liability.

Business Automobile Liability (which includes coverage of any auto, including owned, hired, and non-owned) with limits of at least \$5 million per person and per accident for bodily injury, and \$100,000 per accident for property damage; OR a combined single limit of at least \$1 million per accident.

Workers' Compensation insurance as required by the State of Florida, and Employers' Liability insurance with limits of at least \$1 million per accident for bodily injury and \$1 million per employee for disease.

The successful Bidder must resolve all claims arising out of any incident or accident during the performance of the "work" or operations performed that involve property damage and/or injury.

Professional Liability Insurance insuring its legal liability arising out of the performance of any professional services under this Agreement. Such insurance will have limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Any deductible applicable to any claim will be the sole responsibility of Provider. Provider must continue this coverage for a period of not less than five (5) years after completion of its services to Authority.

If the professional liability insurance is written on a claims-made basis, Provider warrants that any retroactive date under the policy will 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.

[if applicable]: Crime Insurance/Fidelity Bond - Provider will maintain crime insurance coverage, or at the discretion of Authority, a Fidelity Bond, with limits equal to fifty-percent (50%) of the Agreement value or \$50,000.00 whichever is greater. The bond or policy will include coverage for all directors, officers, agents, and employees of the contractor. The bond or policy will include coverage for third party fidelity and name the Authority as Loss Payee. The bond or policy will include coverage for extended theft and mysterious disappearance. The bond or policy will not contain a condition requiring an arrest and conviction. Policies will be endorsed to include coverage for computer crime/fraud.

16.2 OTHER INSURANCE REQUIREMENTS

Additional Insured

The Authority must be named as an additional insured on all policies except for workers' compensation. The policy must be endorsed to include the following 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 insured, including materials, parts or equipment furnished in connection with such Work or Operations."

Acceptability of Insurers

Insurance is to be placed with insurers duly licensed and authorized to do business in the State of Florida and with an AM 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 successful Bidder from potential insurer insolvency.

Waiver of Subrogation

Insurance will be primary and noncontributory and will include a Waiver of Subrogation by both the successful Bidder 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 is in effect, the successful Bidder will 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. The firm's current insurance certificate or a statement from the firm's insurance company verifying the successful Bidder's ability to obtain the insurance coverage as stated herein, should be submitted with the bid. The appointed insurance agent or carrier will be duly licensed to provide coverage and honor claims within Florida. Please send the certificate of insurance with Lee County Port Authority as certificate holder to riskmanagement@flylcpa.com.

The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory.

Policy on Request

If requested in writing by the Authority, the successful Bidder will provide the Authority with a certified copy of all applicable insurance policies required by this RFB and any agreement entered into with the Authority.

Change in coverage

The successful Bidder is required to provide a minimum of thirty (30) days written notice to the Authority Risk Manager of any cancellation, nonrenewal, termination, material change, or reduction of any coverage required herein. All such notices will be sent directly to Lee County Port Authority Risk Manager, 11000 Terminal Access Road, Suite 8671, Fort Myers FL, 33913. If the successful Bidder fails to provide the requisite notice, the Authority may terminate any agreement(s) with the successful Bidder.

Subcontractor's requirement

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

Before starting and until acceptance of goods or services by Authority, Provider will procure and maintain insurance of the types and to the limits specified in paragraphs

16.2.1 through 16.2.5, 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, will name Authority as an additional insured and will contain the severability of interests provisions. By signing this Agreement, Provider further agrees to waive its right to subrogation against the Authority.

Failure to Maintain Insurance – If Provider does not maintain the insurance coverages required by this Agreement at any time, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Provider for such coverages purchased. Authority will be under no obligation to purchase such insurance, nor will it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages will in no way be construed to be a waiver of its rights under this Agreement.

17.0 ASSIGNMENT, TRANSFER AND SUBCONTRACTS

Provider may not assign or transfer any of its rights, benefits or obligations under the Agreement without prior written approval of the Authority. Provider will 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 Provider's performance of services and work under this Agreement.

18.0 PROVIDER AN INDEPENDENT CONTRACTOR

Provider is an independent contractor and is not an employee or agent of the Authority. Nothing in this Agreement will be interpreted to establish any relationship other than that of an independent contractor between the Authority and Provider, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. Nothing in this Agreement may 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.

19.0 F.A.A. NON-DISCRIMINATION CLAUSE

Provider, for itself, its successors in interest, and assigns, as part of the consideration hereof, agrees that it will not discriminate on the basis of race, color, national origin, sex, disability or other protected factor in the performance of this contract. Provider will carry out applicable requirements of 49 CFR Part 23 and Part 26 in the award and administration of DOT-assisted contracts. Provider's failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate.

20.0 NOTICE REGARDING PUBLIC ENTITY CRIMES

In accordance with Section 287.133(2)(a), Florida Statutes, 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, proposal, or reply on a contract to provide any goods or

services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 s. 287.017 for Category Two for a period of 36 months following the date of being placed on the convicted vendor list.

21.0 OWNERSHIP AND TRANSFER OF DOCUMENTS

All documents, including but not limited to reports and other records and data relating to the services specifically prepared or developed by Provider under this Agreement, will be the property of Provider, until 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, will be delivered to the Authority within thirty (30) calendar days.

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 will be subject to the Authority's prior review and approval.

22.0 MAINTENANCE OF RECORDS

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. All records and documentation will be retained by 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 will, 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 will be conducted only during Provider's normal business hours.

23.0 NO THIRD PARTY BENEFICIARIES

Nothing in this Agreement or the incorporated documents will create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

24.0 GOVERNING LAW

This Agreement will be interpreted, construed and governed by the laws of the State of Florida. Exclusive venue for any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement will be in the Circuit Court of Lee County, Florida. The prevailing party in any such suit or action will be entitled to recover its reasonable attorneys' fees and court costs, including any appeals.

25.0 PROHIBITED INTERESTS

No member, officer or employee of the Authority or of the locality during his or her tenure or for one year thereafter will have any interest, direct or indirect, in this contract or the proceeds thereof.

26.0 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 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 will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Authority will 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 will certify and disclose accordingly.

27.0 COVENANTS AGAINST DISCRIMINATION

27.1 DBE POLICY. It is the policy of the U.S. Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 will 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. 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 will take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

27.2 PROMPT PAYMENT REQUIREMENTS. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, and 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.

27.3 INCORPORATION OF PROVISIONS. Provider will include the provisions of paragraphs 27.1 and 27.2 in every subcontract, unless exempt by the above-stated federal regulations or federal directives. Provider will 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. However, 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.

28.0 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 Provider/Consultant must assure that no person in the United States will 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.

Provider 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.

29.0 GENERAL CIVIL RIGHTS CLAUSE

Provider agrees to comply with pertinent federal and state statutes, regulations, executive orders and such rules as are promulgated to ensure that no person will be

excluded from participating in any activity conducted with or benefiting from federal assistance on the grounds of race, creed, color, national origin, sex, age, disability or any other protected category.

This provision binds Provider 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.

30.0 E-VERIFY CLAUSE

Provider certifies that it has registered and is using the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program and is eligible to enter this Agreement. Provider further agrees to provide the Authority with proof of such registration within thirty (30) days of the date of this Agreement.

Provider agrees to use the E-Verify Program to confirm the employment eligibility of:

30.1. All persons employed by Provider during the term of this Agreement.

30.2. All persons, including contractors and subcontractors, assigned by the Provider to perform work or provide services or supplies under the Agreement.

Provider further agrees that it will require each contractor or subcontractor performing work or providing services or supplies 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.

31.0 HEADINGS

The headings of the Sections in this Agreement are for the purpose of convenience only and will not be deemed to expand, limit or change the provisions contained in such Sections.

32.0 ENTIRE AGREEMENT

This Agreement, including the referenced bid documents, constitutes the entire Agreement between the Parties and will supersede all prior agreements or understandings, written or oral, relating to the matters contained in the Agreement and incorporated bid documents.

33.0 NOTICES AND ADDRESS

33.1 All notices required and/or made pursuant to this Agreement to be given by either party to the other will be in writing and will be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

For the Authority:

LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Attention: Airport Executive Director

for Provider:

LJ POWER, INC.
12707 Nutty Brown Rd., Bldg. F
Austin, TX 78737
Attention: Larry Davis, President

33.2 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.

34.0 TERMINATION

This Agreement may be terminated by the Authority at its convenience, or for cause, by giving thirty (30) calendar days written notice to Provider.

35.0 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 Provider 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.

36.0 WAIVER OF BREACH

Waiver by either party of a breach of any provision of this Agreement will not be deemed to be a waiver of any other breach and will not be construed to be a modification of the terms of this Agreement.

37.0 SECURING AGREEMENT DISCLOSURE

Provider warrants that it has not employed or retained any company or person, other than a bona fide 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 bona fide employee of Provider.

38.0 AMENDMENTS OR MODIFICATIONS

The terms of this Agreement may be amended, in writing, by the mutual agreement of the 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 the Parties.

39.0 ACCEPTANCE

Acceptance of this Agreement will be indicated by the signature of the duly authorized representative of each party in the space provided.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day and year first written above.

ATTEST: LINDA DOGGETT
Clerk of the Circuit Court

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

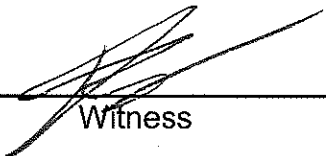
By: _____
Chair or Vice Chair

Approved as to Form for the Reliance
of Lee County Port Authority Only:

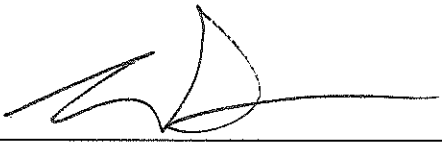
By: _____
Port Authority Attorney's Office

Signed, Sealed and Delivered
in the presence of:


PROVIDER



Witness



Authorized Signature for Provider



Witness

By: Larry Davis
Printed Name

SEAL

President
Title

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve Second Amendment to 2019-2022 Collective Bargaining Agreement between Lee County Port Authority and Southwest Florida Professional Fire Fighters & Paramedics, Local 1826/District 10, I.A.F.F., Inc., amending Article 17-Pay Plan and Article 23-Incentive Pay.
2. **FUNDING SOURCE:** NA
3. **TERM:** One Year
4. **WHAT ACTION ACCOMPLISHES:** Approve the Second Amendment to the 2019-22 Collective Bargaining Agreement between Lee County Port Authority and Local 1826/District 10, I.A.F.F., Inc., Article 17 and Article 23.

5. **CATEGORY:** 14.
Consent Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Steve Hennigan

DIV. Aviation

10. **BACKGROUND:**

In March of 1992, the Southwest Florida Professional Fire Fighters & Paramedics, Local 1826, I.A.F.F., Inc., was certified by Florida's Public Employee Relations Commission as the collective bargaining unit for the Lee County Port Authority's Aircraft Rescue Fire Fighters, Engineers and ARFF Technicians.

In the current 2019-2022 Collective Bargaining Agreement which was ratified by the Board on September 5, 2019, Article 42 "Term Of Agreement," stipulates that Article 17-Pay Plan may be reopened for negotiation during the first and second year of the contract period. In addition to Article 17, each side has the option to present one additional article for negotiation.

Article 17-Pay Plan is negotiated in conjunction with the Port Authority's annual budget process. On April 30, 2021, Port Authority staff and members of the I.A.F.F., Inc., Local 1826/District 10, began negotiations on Article 17. In addition to Article 17, the Union presented Article 23-Incentive Pay for negotiation. After conducting six (6) bargaining sessions, a tentative agreement to the Second Amendment was reached on October 7, 2021.

As amended, Article 17 and Article 23 provides for the following:

Article 17-Pay Plan: Salary adjustment of 4.00% for collective bargaining unit members employed prior to October 1, 2021 which shall be retroactive back to the first pay period in October 2021.

11. **RECOMMENDED APPROVAL**

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Steven P. Hennigan</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<i>Benjamin R. Siegel</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)

Page 2

2) Article 23-Incentive Pay: An Airport Master Firefighter (AMF) certification, obtained through the American Association of Airport Executives (AAAE), replaces the existing Fire Inspector incentive. One incentive was added for a "Peer Fitness Trainer" certification which increases the maximum incentive pay per person from \$2.35 to \$2.65 per hour.

Both parties agree to abide by the current contract until the Second Amendment to Article 17 and Article 23 is fully ratified.

Attachment:

Second Amendment to 2019-22 Collective Bargaining Agreement, District 10

**SECOND AMENDMENT TO THE COLLECTIVE BARGAINING AGREEMENT
BETWEEN THE LEE COUNTY PORT AUTHORITY
AND SOUTHWEST FLORIDA PROFESSIONAL FIRE FIGHTERS & PARAMEDICS
LOCAL 1826/DISTRICT 10, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, INC.**

2019-2022

WHEREAS, on September 5, 2019, the Lee County Port Authority Board of Port Commissioners (Authority) and the Southwest Florida Association of Professional Fire Fighters and Paramedics, Local 1826/District 10, International Association of Fire Fighters, Inc. (Union) entered the current Collective Bargaining Agreement for 2019-2022; and

WHEREAS, Article 42 of the Collective Bargaining Agreement provides that either party desiring to amend the Collective Bargaining Agreement shall provide written notification to the other party in writing by February 1 of the Article to be opened and that Article 17, Pay Plan, shall be open for negotiation in February of 2020 and February of 2021; and

WHEREAS, Authority and Union met and negotiated a mutually satisfactory amendment to Articles 17 and 23 of the Collective Bargaining Agreement covering the time period between October 1, 2020, and extending through October 1, 2021.

NOW THEREFORE BE IT RESOLVED THAT Article 17, Pay Plan, and Article 23, Incentive Pay, of the Collective Bargaining Agreement between Authority and Union, is hereby amended as follows:

SECTION ONE:

The amendment set forth in the following Article 17, is hereby adopted, with strike-through type being the language deleted and underlined text being language added:

ARTICLE 17. PAY PLAN AUTHORITY

Section 17.01

The Authority shall maintain the pay plan.

Section 17.02

Employees start at the minimum rate of pay for their assigned classification. Firefighter Trainees will start at \$2,000 less than the first year in position Firefighter. At the discretion of the Fire Chief, a new employee could start as Firefighter Trainee, Engineer Trainee, or ARFF Technician Trainee based on past experience. The Engineer Trainee will start at \$3,000 less than the first year in position Engineer. The ARFF Technician Trainee will start at \$4,000 less than the first year in position ARFF Technician.

Section 17.03

Promotions - When an employee is promoted to a new classification his/her rate of pay shall be advanced to the minimum pay of the new classification. Employees promoted will be placed on Promotional Probation for six months from the effective date of the promotion. The effective date shall be the beginning of the next full pay period with a minimum of 5-business days notice.

Section 17.04

Base Pay Range

Firefighter	Minimum \$44,534.89	Maximum \$55,318.56
Engineer	Minimum \$55,863.33	Maximum \$66,111.46
ARFF Technician	Minimum \$66,719.19	Maximum \$94,378.25

~~Employees covered by this Agreement that were employed prior to October 1, 2020 shall receive any wage increases, bonuses or profit sharing that may be implemented for all other employees within the Lee County Port Authority from October 1, 2020, through September 30, 2021.~~

Employees covered by this Agreement that were employed prior to October 1, 2021, shall receive an adjustment of their salary of 4.0%, which shall be effective on the first pay period in October 2021.

When an employee's base pay reaches the maximum rate for their classification, the employee will receive a lump sum payment equal to the difference earned from this Article. Example: Current base salary + adjustment = Adjusted salary – Maximum pay = Lump sum payment to be received on the first pay period in ~~after the implementation of any increases covered by this Article~~ in October 2021.

SECTION TWO:

ARTICLE 23. INCENTIVE PAY

The amendment set forth in the following Article 23 is hereby adopted, with strike-through type being the language deleted and underlined text being language added:

Section 23.01

INCENTIVE PAY

Employees within the bargaining unit shall be eligible to receive the following hourly incentives, up to a maximum of ~~\$2.35~~ \$2.65 per hour, effective on the date this agreement is ratified by both parties. Employees must submit in writing their request for incentive pay adjustments using the attached form. The request must include which incentives he/she is requesting and must accompany the official grade or certificate. The incentive pay will become effective the next full pay period. Employees must notify the AUTHORITY in writing a minimum of two (2) weeks before a certification affecting Incentive Pay expires.

<u>CERTIFICATION</u>	<u>HOURLY AMOUNT</u>
EMT *1	1.00
Basic Instructor or higher, or Paramedic *2	.30
CPR Instructor *3	.30
Fire Inspector or higher *4	.30
<u>Peer Fitness Trainer *4</u>	<u>.30</u>
Fire Officer I or higher *5	.45
ICS Instructor * 7 <u>6</u>	.25
Apparatus and Pump Operator* 8-7	.30
<u>Airport Master Firefighter (A.M.F.) *98</u>	<u>.30</u>

<u>CERTIFICATION</u>	<u>MONTHLY AMOUNT</u>
Associate Degree in Fire Science *6	50.00
Bachelor Degree *6	110.00

- *1 Employees must hold a current State of Florida EMT license and be privileged through Medical Director. The AUTHORITY maintains the right to require a minimum of six (6) licensed and privileged EMTs per shift. The AUTHORITY maintains the right to require all new bargaining unit members to hold and maintain a Florida EMT certificate as a condition of employment. Failure to hold and maintain certification is subject to progressive disciplinary action to include suspension and termination. As a condition of promotion all current bargaining unit members as of the date of this Agreement must hold a Florida EMT certification.
- *2 Any ARFF employee may be required to teach classes on duty when asked. State of Florida Basic Instructor or State of Florida Paramedic certificate employees may be required to create training outlines, instruct students, or modify training materials during normal workday hours.
- *3 Employees must hold current CPR Instructor license and are required to teach CPR or First-aid classes when asked, while on duty, or as scheduled with 30-days advance notice.
- ~~*4 Employees must hold a current State of Florida Fire Inspector license and perform inspections, work on pre-fire plans, or other related assignments as designated by the Fire Chief or designee during workday hours.~~
- *4 Employees must successfully pass the IAFF Peer Fitness Trainer program and maintain their certificate. Employees holding the PFT certificate may be asked to create or modify training programs during normal workday hours.
- *5 Employees must hold current State of Florida certificate, and teach related courses on duty when asked.
- *6 Employees must possess a degree in Fire Science at the level of Associate or Bachelor. The employee will be paid for the greater of the two, if more than one is held. These incentives will be the exact amount the AUTHORITY

receives for said incentives, and will be paid monthly on the first check of the month.

- *7 Employees must obtain a current Train-the-Trainer Certificate issued by the National Wildfire Coordinating Group (NWCG) and be privileged through the local Division of Forestry (DOF). Employees will teach related courses when asked, while on duty, or as scheduled with 30-days advance notice.

Recognized Train-the-Trainer courses are NWCG courses; ICS-300, S-130, S-190, Task Force/Strike Team Leader, Staging Officer, Division Supervisor, and Operations Chief.

- *8 Employees must be certified as a Fire Service Apparatus and Pump Operator in the State of Florida.
- *9 Employees must hold a Airport Firefighter (A.M.F.) Award of Certification.

**LEE COUNTY PORT AUTHORITY
ARFF DEPARTMENT**

INCENTIVE PAY REQUEST

In accordance with *Article 23 of the 2019 – 2022 Collective Bargaining Agreement/District 10*, I request the following changes to my Incentive Pay. As verification of entitlement, my official grade(s) and/or certificate(s) are attached.

CERTIFICATION	RATE	CURRENT INCENTIVE(s)	NEW INCENTIVE(s)	<u>EXPIRATION DATE</u>
EMT	1.00			
Instructor I (or higher) or FL Paramedic	.30			
CPR Instructor	.30			
Fire Inspector (or higher)	.30			
<u>Peer Fitness Trainer</u>	<u>.30</u>			
Fire Officer I (or higher)	.45			
NWCG ICS Instructor	.25			
Apparatus & Pump Operator	.30			
<u>Airport Master Firefighter</u>	<u>.30</u>			
TOTAL INCENTIVE (MAX)	2.3565			
AS Degree in Fire Science	50.00			
Bachelor Degree	110.00			

Printed Name

Signature

Date

Route To:

- _____ Captain
- _____ Battalion Chief
- _____ Fire Chief (*Final Approval*)
- _____ Update Incentive Charts
- _____ RPA - _____
Effective Date - Next full pay period

SECTION THREE:

Except as herein amended, the 2019-2022 Collective Bargaining Agreement between the Lee County Board of Port Commissioners and Southwest Florida Professional Fire Fighters and Paramedics, Local 1826/District 10, International Association of Fire Fighters, Inc., shall remain in full force and effect.

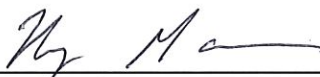
IN WITNESS WHEREOF, the parties have set their signatures this _____ day of _____, 2021.

FOR THE AUTHORITY:



Benjamin Siegel, Executive Director

FOR THE UNION:



Henry Garcia
Local 1826 Vice President
District 10 Vice President



Steven Hennigan, Deputy Executive Director



Tracy Young, Fire Chief

Approved by the Lee County Board of Port Commissioners this _____ day of _____, 2021.

ATTEST: LINDA DOGGETT
CLERK OF COURT

BOARD OF PORT COMMISSIONERS
OF LEE COUNTY FLORIDA

By: _____
Deputy Clerk

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

<p>1. REQUESTED MOTION/PURPOSE: Request Board approve Interlocal Agreement for Coordinated Tall Structure Permitting with the Village of Estero.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: Continue unless terminated, per Section 163.01, F.S.</p> <p>4. WHAT ACTION ACCOMPLISHES: Achieves compliance with FS 333.03 (1)(b).</p>	<p>5. CATEGORY: 15. Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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:

Chapter 333, Florida Statutes, Airport Zoning, requires that every Political Subdivision having an airport hazard area within its territorial limits shall adopt, administer, and enforce airport zoning regulations. Airport hazard area is any area where an airport hazard/obstruction might be established. An airport hazard/obstruction can be established if a structure penetrates into the navigable airspace that surrounds an airport.

Code of Federal Regulations (C.F.R.) Title 14, Part 77 establishes height restrictions and federal notification and review criteria for potential airport obstructions or hazards surrounding airports. Part 77 surfaces for RSW extend into the Village of Estero. The Village of Estero has land underlying a Part 77 surface of RSW, and therefore has an airport hazard area within their territorial limits. FS 333.03 (1)(b) outlines that a political subdivision which controls an airport and another political subdivision, which has land underlying a surface of the airport shall enter into an interlocal agreement to adopt, administer, and enforce airport zoning regulations.

Updated airport zoning regulations for Lee County Port Authority-operated Airports were adopted by Lee County Ordinance 19-03. These airport zoning regulations are found in Airport Compatibility District - Sec. 34-1011 et. seq. & Appendix C - Airport Compatibility District Maps of the Lee County Land Development Code. Lee County Administrative Code 13-7 outlines procedures for permitting of vertical objects that exceed thresholds of the LCPA Airport Obstruction Notification Zone requiring Tall Structures Permit review.

The terms of the Interlocal Agreement provide that the Village of Estero must not issue a development order for structures that meet notification criteria without Tall Structures Permit review and approval by the Port Authority. Any structure over 125' is subject to the Lee County Port Authority Tall Structure Permitting process.

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>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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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Background (continued)

Attachment:
Interlocal Agreement

INTERLOCAL AGREEMENT

COORDINATED TALL STRUCTURE PERMITTING

THIS INTERLOCAL AGREEMENT, is made and entered into this ____ day of _____, 20____, by and between the LEE COUNTY PORT AUTHORITY, a dependent special district and political subdivision of the State of Florida ("Port Authority") and the VILLAGE OF ESTERO, a municipal corporation of the State of Florida ("Village), acting by and through its Village Council, the governing body thereof, (collectively the "Parties") to this Agreement.

WITNESSETH:

WHEREAS, the Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes authorizes the joint exercise of any power, privilege, or authority which the public agencies involved share in common and which each might exercise separately; and,

WHEREAS, the Village and the Port Authority are public agencies within the meaning of the Interlocal Cooperation Act and desire to jointly exercise the power which each might exercise separately under their power to regulate and permit the construction of tall structures, as defined in this Agreement, located within the jurisdiction of the Village and the operational boundaries of public airports under the jurisdiction of the Port Authority; and,

WHEREAS, Chapter 333 of the Florida Statutes defines "airport" as any area of land or water designed and set aside for the landing and taking off of aircraft and used or to be used in the interest of the public for such purpose; and,

WHEREAS, Chapter 333 of the Florida Statutes defines "airport hazard" as an obstruction to air navigation which affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities, and defines "airport hazard area" as any area of land or water upon which an airport hazard might be established; and

WHEREAS, Chapter 333 of the Florida Statutes states that an airport hazard endangers the lives and property of users of the airport and the occupants of land in the airport's vicinity, and, therefore, the creation or establishment of airport hazards must be prevented in the interest of the public health, safety and welfare and in order to protect the utility of the airport and the public investment therein; and,

WHEREAS, Chapter 333 of the Florida Statutes states that certain activities and uses of land in the immediate vicinity of airports are not compatible with normal airport operations and may, if not regulated, endanger the lives of the participants,

adversely affect their health, or otherwise limit the accomplishment of normal activities; and,

WHEREAS, Chapter 333 of the Florida Statutes states that, in order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits shall adopt, administer and enforce airport protection zoning regulations for such airport hazard area, and if an airport is owned or controlled by a political subdivision and if any other political subdivision has land upon which an obstruction may be constructed or altered which underlies any surface of the airport as provided in 14 C.F.R. Part 77, the political subdivisions shall by interlocal agreement adopt, administer and enforce a set of airport protection zoning regulations; and,

WHEREAS, the Code of Federal Regulations (C.F.R.) Title 14, Part 77 establishes height restrictions and federal notification and review criteria pertaining to potential airport obstructions or hazards; and

WHEREAS, pursuant to Florida Statutes Chapter 333 and 14 C.F.R. Part 77, Lee County duly adopted Section 34-1101 et. seq. of the Lee County Land Development Code establishing regulations which restrict the height of structures near any Lee County state-licensed aviation facility, and providing for administrative review procedures for projects which may be a hazard to safe air navigation and, thereby, may derogate public health, safety, and welfare; and,

WHEREAS, the Village Comprehensive Plan states that the Village shall coordinate with the Lee County Port Authority by way of an interlocal agreement or other means to assure consistency with airport zoning regulations, consistent with Florida Statute Section 333.03(b); and

WHEREAS, the Port Authority and the Village find that interlocal cooperation in this matter will make the most efficient use of their respective powers to provide services in a manner that will accord best with the needs and development of the Village and the Port Authority; and,

WHEREAS, the Port Authority is authorized by Chapter 63-1541, Laws of Florida, and Lee County Ordinance 90-02, as amended, to operate and govern all public airport facilities under the jurisdiction of Lee County or the Lee County Port Authority; and

WHEREAS, the Port Authority desires to enter into an interlocal agreement with the Village to apply and enforce existing Lee County Zoning Regulations and procedures pertaining to areas located within the physical boundaries of the Village; and

WHEREAS, the Port Authority and the Village find that entering into this Agreement serves a public purpose and is to the benefit of the public.

NOW, THEREFORE, IN CONSIDERATION OF the foregoing, and the mutual promises as contained herein, the sufficiency of which is acknowledged, the parties agree as follows:

1. RESPONSIBILITY OF THE VILLAGE

- 1.1 The Village Building Official, or his or her designee, shall utilize the Lee County Airspace notification map, as outlined in Section 34-1101 et. seq. of the Lee County Land Development Code in order to determine notification criteria for a Tall Structures Review to be performed by the Lee County Port Authority.
- 1.2 The Village agrees not to issue any development order (as defined in Florida Statute Section 163.3164, including building permits) for structures that meet the notification criteria without Tall Structures Permit approval from the Lee County Port Authority.
- 1.3 The Village agrees to ensure that any after-the-fact permit requests are reviewed by the Lee County Port Authority.
- 1.4 These regulations shall apply to any Lee County state-licensed aviation facility operated by the Port Authority within an airport hazard area within the jurisdictional limits of the Village.

2. RESPONSIBILITY OF THE PORT AUTHORITY

- 2.1 The Port Authority shall be governed by the rules and regulations outlined in Section 34-1101 et. seq. of the Lee County Land Development Code, as amended, pertaining to Airport Hazards, Zones and Regulations and Tall Structures Permitting.
- 2.2 The Port Authority shall review all applications for Tall Structures Permits using the procedures set out in Section 34-1101 et. seq. to issue or deny issuance of a Tall Structures Permit.
- 2.3 The Port Authority shall provide updated copies of the Lee County Port Authority Obstruction Notification Map and appropriate documentation to the Village each time such documentation or maps are amended.
- 2.4 The Port Authority agrees, on behalf of the Lee County Board of Port Commissioners, to coordinate any future revisions to Section 34-1101 et. seq. with the Village.

3. TERM

This Agreement shall take effect on the date it is signed by the last of the parties signing below and shall continue in full force and effect until terminated by either party. Pursuant to Section 163.01, Florida Statutes, this Agreement may be rescinded or revised by mutual agreement of both the Village and Port Authority at any time, or it may be rescinded by either party upon thirty (30) days written notice to the other party, for any reason whatsoever, or it may be rescinded upon written notice of a material breach of the agreement, provided that, prior to such termination due to material breach, the breaching party shall be given thirty (30) days from the receipt of such written notice to correct any alleged material breach.

4. MODIFICATIONS

All changes, modifications, addendums, or amendments to this Agreement shall be in writing and executed with the same formalities as this document.

5. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties, and shall supersede all prior agreements pertaining to this subject, whether written or oral.

This Agreement may be executed in counterparts and each fully executed counterpart shall be deemed an original instrument.

IN WITNESS WHEREOF, the Port Authority has caused these presents to be signed in its name and behalf by its Chairman of the Board of Port Commissioners and attested to by the Clerk of the Board of Port Commissioners, thereunder duly authorized, and to its acceptance of this Agreement. The Village has caused these presents to be signed in its name and behalf by its Mayor and its official seal to be hereunto affixed and attested by its Village Clerk, all as of the day and year first above set forth.

ATTEST

By:


Village Clerk, Carol Sacco

VILLAGE OF ESTERO

By:


Mayor Katy Errington

APPROVED AS TO LEGAL FORM

Date: _____

By: 
Village Attorney, Burt Saunders

ATTEST: LINDA DOGGETT

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Clerk or Deputy Clerk

By: _____
Chair or Vice Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF THE 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 Contract Amendment with Manhattan Construction (Florida), Inc. clarifying and restating the contract term for the RSW Terminal Expansion Project as previously approved by the Board.
2. **FUNDING SOURCE:** N/A
3. **TERM:** Contract Term extended through January 31, 2025.
4. **WHAT ACTION ACCOMPLISHES:** Provides for contract term clarification consistent with previously Board approved contract amendment.

5. **CATEGORY:** 16.
Consent Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Mark Fisher

DIV. Development

10. **BACKGROUND:**

Previously, the Board approved Contract Amendment #5 to Manhattan Construction which provided for construction management/general contractor services associated with the RSW Terminal Expansion Project for a duration of 36 months from notice-to-proceed to substantial completion and an additional 3 months to final completion. This contract amendment specifically clarifies and restates that Contract amendment #5 extends the overall contract time to January 31, 2025.

Attachment:

Contract Amendment

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>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<i>Benjamin R. Siegel</i>

12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**

- APPROVED
- APPROVED as AMENDED
- DENIED
- OTHER

13. **PORT AUTHORITY ACTION:**

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

CA No. 11

Vendor No. 407611

Contract No. 7684

Effective Date _____

**LEE COUNTY PORT AUTHORITY
LOQ 16-21 Construction Manager/General Contractor
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: CM-GC Services Extending Contract Term Through January 31, 2025 for the RSW Terminal Expansion Project.

(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 type="checkbox"/> Design Change | <input type="checkbox"/> Owner Requested |
| <input type="checkbox"/> Safety Considerations | <input type="checkbox"/> Cost Benefit to Project |
| <input checked="" type="checkbox"/> Other: <u>Contract Extension</u> | |

(2) **Method of Negotiating Price of Work**

Method of Negotiating Time of Work:

- | | |
|---|--|
| <input type="checkbox"/> Lump Sum | <input type="checkbox"/> Consultant/Contractor Records |
| <input type="checkbox"/> Time and Materials | <input type="checkbox"/> Cost plus fixed fee |
| <input type="checkbox"/> Unit Prices | <input type="checkbox"/> Force Account |
| <input type="checkbox"/> Hourly plus expenses | |
| <input checked="" type="checkbox"/> Other: <u>N/A</u> | |

(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.

Manhattan Construction (Florida), Inc. CM/GC ACCEPTANCE

Matt Jones  10/1/21

LCPA Project Manager Recommendation (If Applicable) _____

N/A

#441981-1-9401 & #441981-1-94-02

FDOT: _____

FDOT Representative

FAA: N/A

FAA Representative

**Approved as to form for the reliance of the
Lee County Port Authority Only:**

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. 11

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
None				

Manhattan Construction Group No. 7684

10/1/2021

CA 11

Task 3.2

	Board Approved Contract Amount	Total Project Budget Adjustments	Other Contract Adjustments	This Contract Adjustment	TA Issued \$100,000 Level Maximum FY 16-17	TA Issued \$100,000 Level Maximum FY 17-18	TA Issued \$100,000 Level Maximum FY 18-19	TA Issued \$100,000 Level Maximum FY 19-20	CA Issued \$100,000 Level Maximum \$1,000,000 FY 20-21	Current Contract Value	TA's Issued	Pending TA's	Remaining Contract Balance
1. Preconstruction Services	\$ 84,700.00	\$ -	\$ -	\$ -	\$ 84,700.00	\$ -	\$ -	\$ -	\$ -	\$ 84,700.00	\$ 84,700.00	\$ -	\$ -
2. Design/Preconstruction Services	\$ 464,352.16	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 95,803.92	\$ 95,803.92	\$ 464,352.16	\$ 464,352.16	\$ -	\$ -
3. Revised Cost Estimate	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 49,837.56	\$ 49,837.56	\$ 49,837.56	\$ -	\$ -
4. Tap & Trace	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 87,624.80	\$ 87,624.80	\$ 87,624.80	\$ -	\$ -
5. CM-GC Services	\$ 267,162,220.72	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 267,162,220.72	\$ 267,162,220.72	\$ 4,052,600.72	\$ -
CONTRACT TOTALS	\$ 267,626,572.88	\$ -	\$ -	\$ -	\$ 84,700.00	\$ -	\$ -	\$ -	\$ 232,265.88	\$ 267,847,735.24	\$ 265,795,134.52	\$ 4,052,600.72	\$ -

Manhattan Construction – Terminal Expansion Contract #7684

CA 11 - Task 5.2

- I. **Objective:**
Provides for contract term extension clarification consistent with previously approved contract amendment.

- II. **Description:**
Previously Contract Amendment #9 to this contract provided for construction management/general contractor services associated with the RSW Terminal Expansion & Remote Loading Dock Project for a duration of 36 months from notice-to-proceed to substantial completion and an additional 3 months to final completion. This contract amendment specifically clarifies that Contract Amendment #9, based on a notice-to-proceed of October 1, 2021, amends the contract term and provides for a revised contract term through January 31, 2025. Dates and durations associated with substantial completion and final completion project milestones are not revised through this contract amendment.

- III. **Schedule:**
Provides for a contract term through January 31, 2025.

- IV. **Fees:**
Zero Dollars.

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve a Contract Amendment with Atkins North America, Inc. clarifying and restating the contract term for the RSW Terminal Expansion Project as previously approved by the Board.
2. **FUNDING SOURCE:** N/A
3. **TERM:** Contract Term extended through January 31, 2025.
4. **WHAT ACTION ACCOMPLISHES:** Provides for contract term clarification consistent with previously Board approved contract amendment.

5. **CATEGORY:** 17.
Consent Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Mark Fisher

DIV. Development

10. **BACKGROUND:**

Previously, the Board approved Contract Amendment #52 which provided for construction administration services associated with the RSW Terminal Expansion Project for a duration of 36 months from notice-to-proceed to substantial completion and an additional 3 months to final completion. This contract amendment specifically clarifies and restates that Contract Amendment #52 extends the overall contract time to January 31, 2025.

Attachment:

Contract Amendment

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>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<i>Benjamin R. Siegel</i>

12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**

APPROVED
APPROVED as AMENDED
DENIED
OTHER

13. **PORT AUTHORITY ACTION:**

APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER

CA No. 56

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: Construction Administration Services Extending Contract Term through January 31, 2025 for the RSW Terminal Expansion Project

(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 type="checkbox"/> Design Change | <input type="checkbox"/> Owner Requested |
| <input type="checkbox"/> Safety Considerations | <input type="checkbox"/> Cost Benefit to Project |
| <input checked="" type="checkbox"/> Other: <u>Contract Extension</u> | |

(2) Method of Negotiating Price of Work

- _____ Lump Sum
 _____ Time and Materials
 _____ Unit Prices
 _____ Hourly plus expenses
 _____ X Other N/A

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



441981-1-94-01 & 441981-1-94-02

FDOT: _____

FDOT Representative

FAA: N/A

FAA Representative

**Approved as to form for the reliance of the
Lee County Port Authority only:**

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. 56

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
None				

Altria North America Contract No. 746

Contract Amendment #66

EXHIBIT B - CONTRACT SUMMARY

#	Task	Board Approved Contract Amount	TA	Total Project Budget	This Contract	TA Issued			Current Contract Value	TA Issued	Pending	Remaining Contract Balance
						EA 2018	EA 2019	EA 2020				
1	Concept Refinement	\$ 598,445.30										
2	Concept Expansion Study	\$ 90,540.25										
3	Concessions Impact Analysis	\$ 93,147.50										
4	Terminal Gate Parking Analysis	\$ 11,075.00										
5	Concept Expansion Concept	\$ 77,071.75										
6	Version Monitor/BHE Floor System	\$ 25,275.00										
7	Design Services	\$ 8,999,830.00										
8	Passenger Survey	\$ 96,817.21										
9	Market Insight Analysis/Reporting	\$ 77,355.00										
10	Overseas Baggage Study	\$ 24,627.20										
11	Support Services	\$ 1,942.71										
12	Concession Master Plan	\$ 84,624.20										
13	Concession C-Sound Assessment	\$ 34,775.50										
14	Wayfinding Signage Terminal	\$ 57,647.00										
15	Accession Relocation	\$ 90,940.13										
16	Overseas Baggage System	\$ 92,319.05										
17	U.S. Customs/Border Protection	\$ 93,545.10										
18	Temporary TSA Space	\$ 51,132.25										
19	Removal Loading Dock	\$ 89,557.75										
20	Gate B/A Loading Dock Field Serv	\$ 86,086.24										
21	Additional Design Services	\$ 1,976,445.39										
22	Design - Modeling of Existing Conditions	\$ 450,900.00										
23	Concessions 1 - Master Plan Completion	\$ 151,627.20										
24	Concurrency Architectural Design - Delete	\$ -										
25	Atlanta Path Survey	\$ 10,001.30										
26	Removal Loading Dock Road/Highway Design	\$ 66,544.00										
27	Design - Fire Alarm Upgrade & D Gates	\$ 755,824.61										
28	Design - Fire Alarm Upgrade & D Gates	\$ 869,849.83										
29	Design - Airline Lounge Shell Space	\$ -										
30	Additional Construction Document Planning	\$ -										
31	Elementary Farm Platform Planning - Admitt	\$ 175,550.50										
32	Atlanta Restroom Renovation - Add'l Design	\$ -										
33	Atlanta Platform Design Services	\$ -										
34	Temp. Checkpoint Design Services	\$ 81,376.75										
35	Removal of D Gates/GP Renovations	\$ 52,295.75										
36	Renovation of Gate B/A	\$ 97,719.50										
37	Cable Identification Investigation	\$ 88,430.00										
38	Concession 1 Lease Outfit Drawings	\$ 45,042.35										
39	Concession Point Covid Revisions	\$ 54,035.35										
40	Restroom Upgrade Post Covid Solutions	\$ 82,883.25										
41	GP/VE & Alternative Analysis Services	\$ 89,159.75										
42	GP/VE Amendments for Fire Pump Room	\$ -										
43	Construction Cost Update	\$ 37,350.00										
44	Pump Room Relocation	\$ 37,451.00										
45	Concession Final Solicitation Assistance	\$ 91,475.50										
46	Contract Language Change	\$ -										
47	Construction Admin Services	\$ 11,183,843.82										
48	CRDC Programming	\$ 36,625.50										
49	CA Services of Issued Contract Documents	\$ 895,184.30										
50	CRDC Solicitation Assistance	\$ 83,501.80										
CONTRACT TOTALS						\$ 24,354,689.43	\$ 22,674,741	\$ 999,242.93	\$ 636,825.70	\$ 11,183,843.82	\$ 11,183,843.82	

Page 5 of 4

Based on row level 4 - \$ 100,000 / 1/15/19

Atkins – Terminal Expansion Contract #7548

CA 56 - Task 47.2

- I. **Objective:**
Provides for contract term extension clarification consistent with previously approved contract amendment.

- II. **Description:**
Previously Contract Amendment #52 to this contract provided for construction administration services associated with the RSW Terminal Expansion & Remote Loading Dock Project for a duration of 36 months from notice-to-proceed to substantial completion and an additional 3 months to final completion. This contract amendment specifically clarifies that Contract Amendment #52, based on a notice-to-proceed of October 1, 2021, amends the contract term and provides for a revised contract term through January 31, 2025.

- III. **Schedule:**
Provides for a contract term through January 31, 2025.

- IV. **Fees:**
Zero Dollars.

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|--|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a Contract Amendment with Kimley-Horn & Associates, Inc. clarifying and restating the contract term for the RSW Rehabilitation of Airside Pavement project as previously approved by the Board.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: Contract Term extended through Contract Term extended through March 1, 2022.</p> <p>4. WHAT ACTION ACCOMPLISHES: Provides for contract term clarification consistent with previously Board approved contract amendment.</p> | <p>5. CATEGORY: 18.
Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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>Mark Fisher</u></p> <p>DIV. <u>Development</u></p> |
|---|--|

10. BACKGROUND:

Previously, Contract Amendment #19 approved by the Board provided for construction administration services associated with the RSW Rehabilitation of Taxiways A, F, & G2 Project for a duration of 490 calendar days. This contract amendment specifically clarifies and restates that Contract Amendment #19 extends the overall contract term to March 1, 2022.

Attachment
Contract Amendment

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>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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> |
|---|---|

CA No. 27

Vendor No. 362759

Contract No. 7550

Effective Date _____

**LEE COUNTY PORT AUTHORITY
LOQ 16-05 Design Rehabilitation Airside Pavement
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: CA Services for Rehabilitation of Taxiways A, F, & G2 Extending Contract Term through March 1, 2022 for the RSW Rehabilitation of Airside Pavement Project

(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 type="checkbox"/> Design Change | <input type="checkbox"/> Owner Requested |
| <input type="checkbox"/> Safety Considerations | <input type="checkbox"/> Cost Benefit to Project |
| <input checked="" type="checkbox"/> Other: <u>Contract Extension</u> | |

(2) Method of Negotiating Price of Work

- _____ Lump Sum
 _____ Time and Materials
 _____ Unit Prices
 _____ Hourly plus expenses
X _____ Other: N/A

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.

KIMLEY-HORN & ASSOC., INC. ARCHITECT/ENGINEER ACCEPTANCE

Stewart Robertson

 10/1/21

Julia Focaracci

 10/1/21

#431367-19401 & #431367-19402

FDOT: _____
FDOT Representative

FAA: _____
FAA Representative

Approved as to form for the reliance of Lee County Port Authority only:

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. 27

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
None				

EXHIBIT B - CONTRACT SUMMARY

Kimley-Horn and Associates Contract No. 7550

10/1/2021

#	27 Task 12.2	Board Approved Contract Amount	Other Contract Adjustments	This Contract Adjustment	TA Issued	TA Issued	TA Issued	TA Issued	CA Issued	Current Contract Value	TAs Issued	Pending TAs	Remaining Contract Balance
					\$100,000 Level Maximum \$1,000,000 FY 2016-17	\$100,000 Level Maximum \$1,000,000 FY 2017-18	\$100,000 Level Maximum \$1,000,000 FY 2018-19	\$100,000 Level Maximum \$1,000,000 FY 2019-20	\$100,000 Level Maximum \$1,000,000 FY 2020-21				
1	Pavement Evaluation	\$ 890,962.00	\$ -	\$ -	\$ 12,650.00	\$ -	\$ 12,830.00	\$ -	\$ -	\$ 916,442.00	\$ 907,908.40	\$ -	\$ -
2	Bio Remediation Injection Wells	\$ -	\$ -	\$ -	\$ 69,810.00	\$ 105,458.91	\$ -	\$ -	\$ -	\$ 175,268.91	\$ 175,268.91	\$ -	\$ -
3	Taxiway F Pavement - Included in Tas	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4	Design Services	\$ 3,997,430.14	\$ -	\$ -	\$ -	\$ 29,190.00	\$ 608,825.00	\$ 46,159.00	\$ -	\$ 4,026,620.14	\$ 3,998,329.14	\$ -	\$ 28,291.00
5	Taxiway F Pavement CA Services	\$ -	\$ -	\$ -	\$ -	\$ 9,885.00	\$ -	\$ -	\$ -	\$ 9,885.00	\$ 9,885.00	\$ -	\$ -
6	Gate B9 Void Evaluation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 28,636.72	\$ -	\$ -	\$ 28,636.72	\$ 28,636.72	\$ -	\$ -
7	North Ramp Erosion	\$ -	\$ (2,969.00)	\$ -	\$ -	\$ -	\$ 29,690.00	\$ -	\$ -	\$ 26,721.00	\$ 26,721.00	\$ -	\$ -
8	TW F Add'l Geotech Test Priority 1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 92,178.00	\$ 92,178.00	\$ -	\$ -
9	TW F Add'l Geotech Test Priority 2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 83,178.00	\$ 83,178.00	\$ -	\$ -
10	Air Cargo High Mast Lighting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30,055.00	\$ 30,055.00	\$ -	\$ -
11	Project Design Revisions	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 103,405.00	\$ -	\$ 103,405.00	\$ 103,405.00	\$ -	\$ -
12	CA Services for Rehab of Taxiways	\$ 725,731.50	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 725,731.50	\$ 725,731.50	\$ -	\$ -
13	CA Services for New Airfield Ligting V	\$ 138,145.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 138,145.00	\$ 138,145.00	\$ -	\$ -
14	CA Services for Cargo Ramp Rehab	\$ 310,875.00	\$ (46,137.50)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 264,737.50	\$ 264,737.50	\$ -	\$ -
15	Cargo Ramp Permit Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ -	\$ -
CONTRACT TOTALS		\$ 6,063,143.64	\$ (49,106.50)	\$ -	\$ 82,460.00	\$ 144,533.91	\$ 679,981.72	\$ 149,564.00	\$ 1,000.00	\$ 6,622,003.77	\$ 6,585,179.17	\$ -	\$ 28,291.00

Kimley Horn – Rehabilitation of Airside Pavement Contract #7550

CA 27 - Task 12.2

I. Objective:

Provides for contract term extension clarification consistent with previously approved contract amendment.

II. Description:

Previously Contract Amendment #19 to this contract provided for construction administration services associated with the RSW Rehabilitation of Taxiways A, F, & G2 Project for a duration of 490 calendar days. This contract amendment specifically clarifies that Contract Amendment #19 amends the contract term and provides for a revised contract term of Contract #7550 through March 1, 2022. This extension allows for work on all airside paving projects identified as part of the Airside Paving Contract #7550.

III. Schedule:

Provides for a contract term through March 1, 2022.

IV. Fees:

Zero Dollars.

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Board approve natural gas line easement to Peoples Gas System, a Division of Tampa Electric Company, to provide natural gas service to the Qdoba Restaurant Corporation leased property at Page Field Commons</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: N/A</p> <p>4. WHAT ACTION ACCOMPLISHES: Approves a gas line easement to allow Peoples Gas System, a Division of Tampa Electric Company, to provide natural gas service to the Qdoba Restaurant Corporation leased property at Page Field Commons.</p>	<p>5. CATEGORY: 19. Consent Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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>Mark A. Trank</u></p> <p>DIV. <u>Port Attorney</u></p>
---	--

10. BACKGROUND:

Peoples Gas System, a Division of Tampa Electric Company, has requested the Board of Port Commissioners grant a natural gas line easement to the utility to provide natural gas service to the Qdoba Restaurant Corporation, which has leased a parcel at Page Field Commons. It is in the Port Authority's best interest to grant the requested easement.

Attachment: Gas Line Easement and Exhibits

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>
---	---

THIS INSTRUMENT PREPARED BY:

Lee County Port Authority Attorney's Office
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

Strap No.: 1-45-24-00-00007.0030

Section 01, Twp. 45 S, Range 24 E

GAS LINE EASEMENT

This Gas Line Easement ("Easement") is made this _____ day of November 2021, between LEE COUNTY PORT AUTHORITY, a dependent political subdivision of Lee County, Florida, whose address is 11000 Terminal Access Road, Ste. 8671, Fort Myers, Florida 33913 ("Grantor") and PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, a Florida corporation, whose mailing address is P.O. Box 2562, Tampa, Florida 33601, and its licensees, agents, successors and assigns (collectively "Grantee").

The undersigned Grantor, in consideration of the payment of \$1.00 and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, grants and gives to Grantee a nonexclusive easement for the construction, operation and maintenance of underground gas line facilities to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, or change the size of and remove such facilities or any of them, within an easement described on the attached Exhibit "A" as a "10' Gas Easement" (the "Easement Area").

Together with the right to permit any other person, firm or corporation to install the gas line within the Easement Area and to operate the same for delivery of gas service; 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 gas line service or distribution; 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 WHEREOF, the Grantor has caused the foregoing to be executed intending to be bound as of the date and year first above written.

ATTEST:
LINDA DOGGETT,
Clerk of Circuit Court

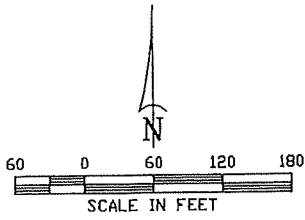
BOARD OF PORT COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair/Vice-Chair

Approved as to Form for the Reliance of
Lee County Port Authority:

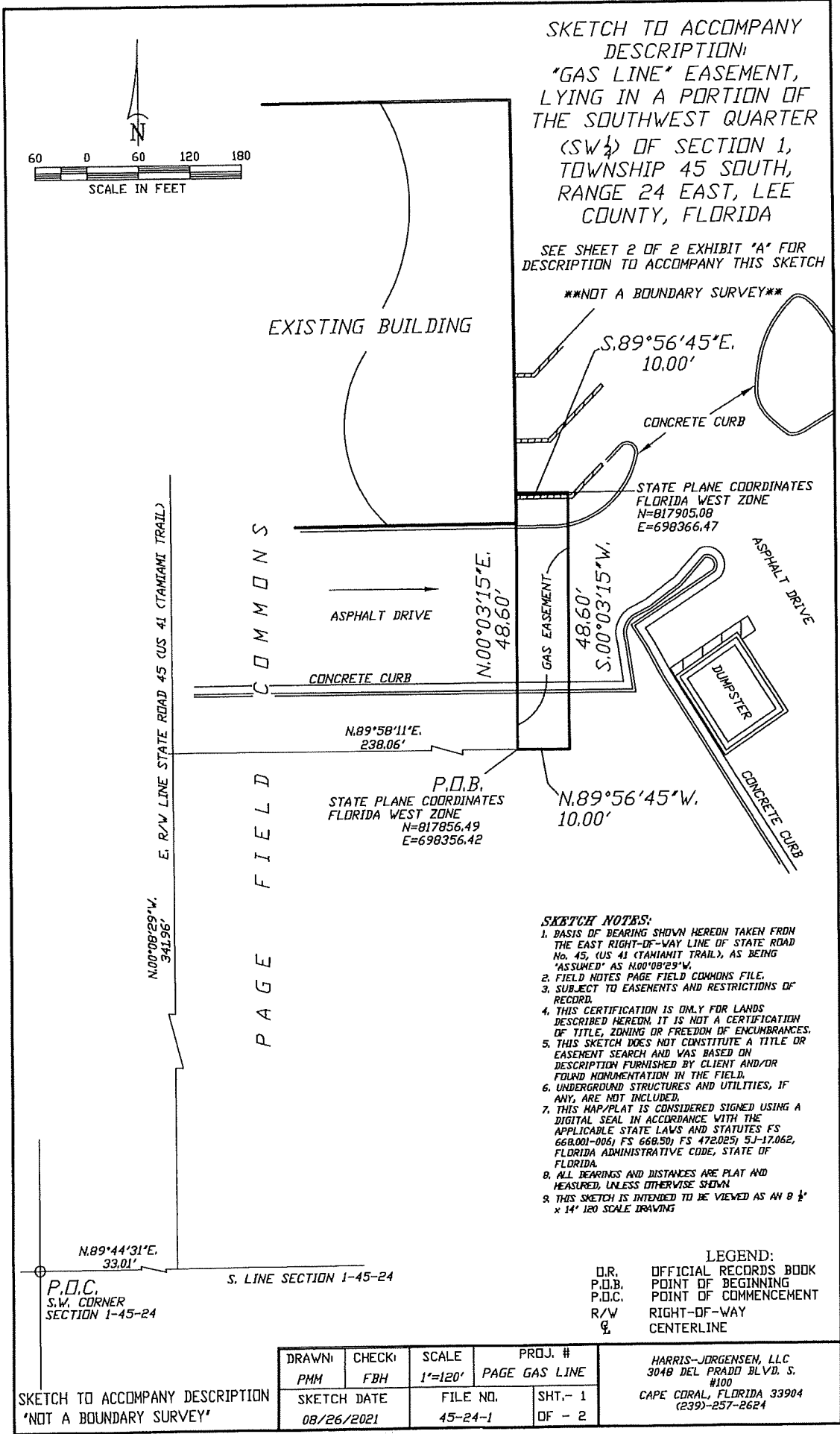
By: _____
Port Authority Attorney's Office



SKETCH TO ACCOMPANY DESCRIPTION:
 "GAS LINE" EASEMENT,
 LYING IN A PORTION OF
 THE SOUTHWEST QUARTER
 (SW $\frac{1}{4}$) OF SECTION 1,
 TOWNSHIP 45 SOUTH,
 RANGE 24 EAST, LEE
 COUNTY, FLORIDA

SEE SHEET 2 OF 2 EXHIBIT "A" FOR
 DESCRIPTION TO ACCOMPANY THIS SKETCH

NOT A BOUNDARY SURVEY



STATE PLANE COORDINATES
 FLORIDA WEST ZONE
 N=817905.08
 E=698366.47

P.O.B.
 STATE PLANE COORDINATES
 FLORIDA WEST ZONE
 N=817856.49
 E=698356.42

- SKETCH NOTES:**
1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE EAST RIGHT-OF-WAY LINE OF STATE ROAD No. 45, (US 41 (TAMIAMI TRAIL)), AS BEING "ASSUMED" AS N.00°08'29"W.
 2. FIELD NOTES PAGE FIELD COMMONS FILE.
 3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
 4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
 5. THIS SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
 6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
 7. THIS MAP/PLAN IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 66B.001-006; FS 66B.50; FS 472.025; 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.
 8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
 9. THIS SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2" x 14" 120 SCALE DRAWING.

LEGEND:
 D.R. OFFICIAL RECORDS BOOK
 P.O.B. POINT OF BEGINNING
 P.O.C. POINT OF COMMENCEMENT
 R/W RIGHT-OF-WAY
 CL CENTERLINE

SKETCH TO ACCOMPANY DESCRIPTION
 "NOT A BOUNDARY SURVEY"

DRAWN: PMM	CHECK: FBH	SCALE 1"=120'	PROJ. # PAGE GAS LINE
SKETCH DATE 08/26/2021		FILE NO. 45-24-1	SHT.- 1 DF - 2

HARRIS-JORGENSEN, LLC
 3048 DEL PRADO BLVD. S.
 #100
 CAPE CORAL, FLORIDA 33904
 (239)-257-2624

Exhibit "A"

EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH:
"GAS LINE" EASEMENT,
LYING IN A PORTION OF THE SOUTHWEST QUARTER
(SW $\frac{1}{4}$) OF SECTION 1, TOWNSHIP 45 SOUTH, RANGE 24
EAST, LEE COUNTY, FLORIDA

SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY THIS DESCRIPTION

NOT A BOUNDARY SURVEY

DESCRIPTION:

A TRACT OR PARCEL OF LAND LYING IN A PORTION OF THE SOUTHWEST QUARTER (SW $\frac{1}{4}$) OF SECTION 1, TOWNSHIP 45 SOUTH, RANGE 24 EAST, CITY OF FORT MYERS, LEE COUNTY, FLORIDA, SAID TRACT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER (SW $\frac{1}{4}$) OF SECTION 1, TOWNSHIP 45 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA; THENCE RUN N.89°44'31"E. ALONG THE SOUTH LINE OF SAID SECTION 1, TO A POINT OF INTERSECTION ALONG THE EAST RIGHT OF WAY LINE OF STATE ROAD No. 45, (US41) (TAMIAMI TRAIL) FOR 33.01 FEET; THENCE RUN N.00°08'29"W. ALONG SAID EAST RIGHT OF WAY LINE FOR 341.96 FEET; THENCE RUN N.89°58'11"E. FOR 238.06 FEET TO THE POINT OF BEGINNING; THENCE RUN N.00°08'15"E. FOR 48.60 FEET; THENCE RUN S.89°56'45"E. FOR 10.00 FEET; THENCE RUN S.00°08'15"W. FOR 48.60 FEET; THENCE RUN N.89°56'45"W. FOR 10.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 486.02 SQ. FT, MORE OR LESS.

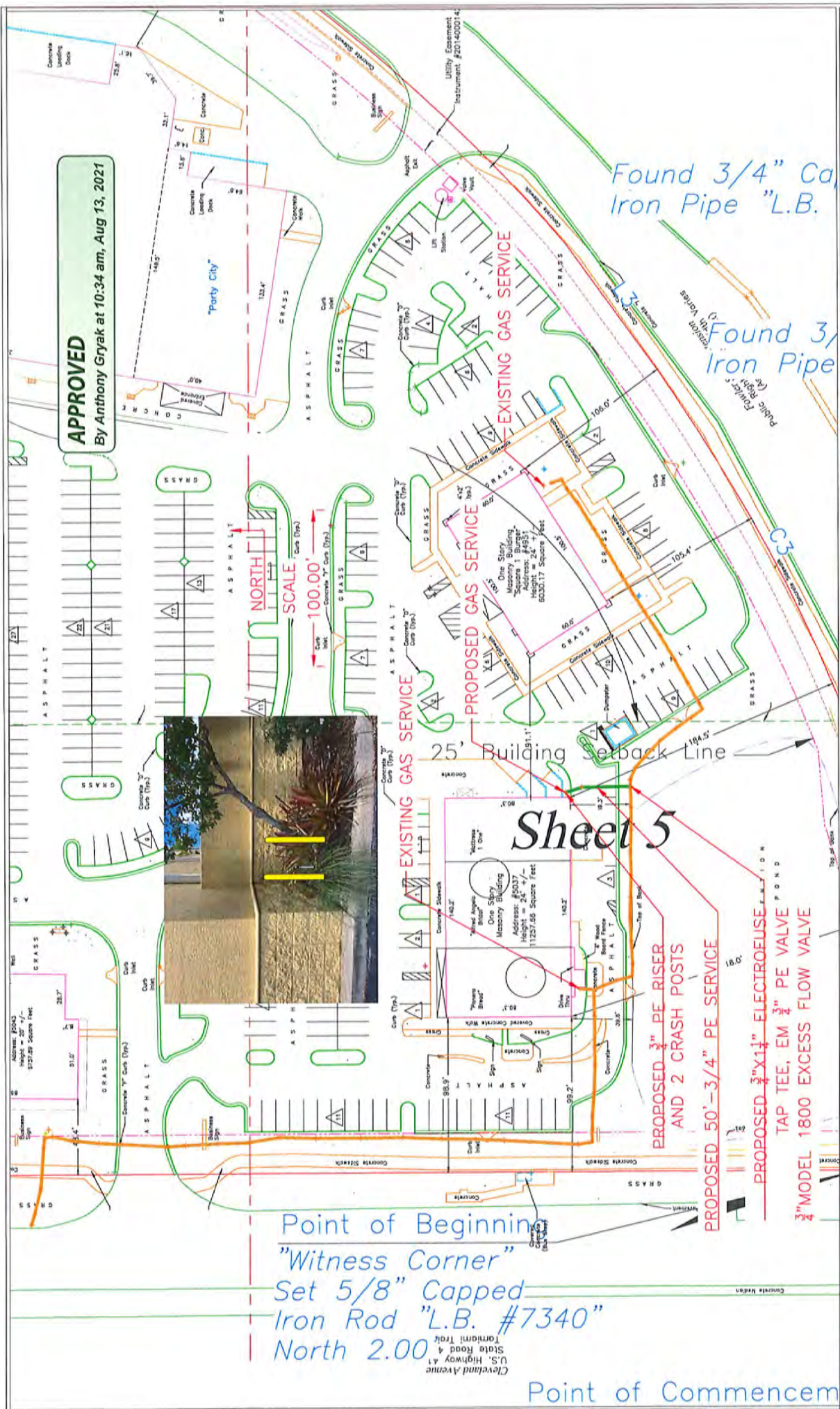
Phillip M Mould,
P.S.M. 6515
State of Florida

Digitally signed by
Phillip M Mould, P.S.M.
6515 State of Florida
Date: 2021.08.27
15:55:41 -04'00'

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
LS6515 - STATE OF FLORIDA
AUGUST 26, 2021

HARRIS-JORGENSEN, LLC
3048 DEL PRADO BLVD. S.
#100
CAPE CORAL, FLORIDA 33904
(239)-257-2624

APPROVED
By Anthony Gryak at 10:34 am, Aug 13, 2021



Found 3/4" Ca Iron Pipe "L.B."

Found 3/4" Iron Pipe

Point of Beginning
"Witness Corner"
Set 5/8" Capped
Iron Rod "L.B. #7340"
North 2.00'

Sheet 5

PROPOSED 3/4" PE RISER
AND 2 CRASH POSTS
PROPOSED 50'-3/4" PE SERVICE

PROPOSED 3/4"x1 1/2" ELECTROUSE TAP TEE, EM 3/4" PE VALVE
3/4" MODEL 1800 EXCESS FLOW VALVE

EXISTING GAS SERVICE
PROPOSED GAS SERVICE
EXISTING GAS SERVICE

Cleveland Avenue
U.S. Highway 4
State Road 4
North 2.00'

Point of Commencem

ADDRESS: QUESO TIME FL 2 LLC 5037 South Cleveland Ave

DRAWING: 01



REV. NOTE
DRAWN ON August 13, 2021
CHECKED BY: KENNETH E. SMITH
TITLE: PASE FIELD COMMONS PROPOSED GAS

NO.	DESCRIPTION

Vertical Scale

Horizontal Scale

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve the first amendment to the service provider agreement with UDT Corporation exercising the option to extend the agreement's term for a period of three additional years.
2. **FUNDING SOURCE:** General Airport Operating Revenues collected during the normal operation of Southwest Florida International Airport, Account Number VF5132541200.3190, Information Technology
3. **TERM:** Three Years commencing January 17, 2022 – January 16, 2025
4. **WHAT ACTION ACCOMPLISHES:** Extends the current agreement for the support of the airports unified communication system with UDT for an additional three years under the same terms and conditions.

5. **CATEGORY:** 20.
Administrative Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

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

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Brian McGonagle

DIV. Administration

10. **BACKGROUND:**

On January 17, 2019, the Board approved a three-year agreement with UDT Corporation for the purchase and support of a unified communications system which included a telephone PBX for use at Southwest Florida International and Page Field airports. The agreement is due to expire on January 16, 2022, and staff is therefore requesting the Board's approval to exercise the extension option, as contained in the original agreement for an additional three years.

Under the terms of the contract, UDT will provide hardware and software support for the Unified Communications System, which includes all desk phones and the PBX, at RSW & FMY and an onsite engineer who provides support for moves, adds and changes for all LCPA phones at the airport including the common use passenger processing phones and all phones in the CBP FIS.

During the initial contract term, UDT provided exceptional service to Port staff including proactive monitoring and maintenance of all hardware and software.

The extension period, if approved, will retain the same terms and conditions of the initial term to include the onsite engineer.

11. **RECOMMENDED APPROVAL**

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<i>Benjamin R. Siegel</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)

Annual costs

Telecommunications hardware/software support	\$110,316
SIP Trunks	\$1,499
Onsite Engineer	\$75,600
Total annual cost	\$187,365
Total 3 year cost	\$562,095

Attached: UDT Agreement 2022 - signed

Contract Number _____
Vendor Number 416718

LEE COUNTY PORT AUTHORITY
FIRST RENEWAL AND EXTENSION OF SERVICE PROVIDER AGREEMENT
RFP # 18-28

THIS FIRST RENEWAL AND EXTENSION is made and entered this _____ day of _____, 2021, between the **LEE COUNTY PORT AUTHORITY**, a special district and political subdivision of the State of Florida ("Authority"), at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913, and **UNITED DATA TECHNOLOGIES, INC.**, a Florida corporation, ("Provider"), at 2900 Monarch Lakes Blvd., Ste. 300, Miramar, FL 33027, FEIN 65-0566138 (collectively the Authority and Provider are referred to as the "Parties").

WITNESSETH:

WHEREAS, the Parties entered into a Service Provider Agreement ("Agreement") dated January 18, 2019 for Provider to furnish/provide, install, test and maintain a unified communications system for Southwest Florida International Airport and Page Field General Aviation Airport in Fort Myers, Florida specified in RFP # 18-28; and

WHEREAS, the initial term of the Agreement is three (3) years, and expires on January 18, 2022; and

WHEREAS, the Authority has the option to renew and extend the initial term for up to two (2) additional 3-year periods from the expiration date of the initial term; and

WHEREAS, to exercise its option to renew and extend the initial term, or any renewed/extended term of this Agreement, the Authority must give the Provider written notice of its intent to exercise its option to renew and extend at least ninety (90) days

before the then current term expires; and

WHEREAS, the Authority provided timely written notice of its intent to exercise its option to renew and extend the Agreement to the Provider; and

WHEREAS, any renewed/extended term must be agreed to in writing and executed by the Parties with the same formality as this Agreement.

NOW, THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby extend and renew the Agreement as follows:

1. Recitals. The above recitals are true and correct and incorporated into and made a part of this First Renewal and Extension by reference.
2. Renewal and Extension of Initial Term. The Parties hereby agree that the Agreement is renewed and extended for an additional three (3) year term.
3. Except as amended by this First Renewal and Extension, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Renewal and Extension by their proper officials, duly authorized to do so the date above first written.

ATTEST: LINDA DOGGETT
Clerk of the Circuit Court

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk


By: _____
Chair/Vice Chair


Approved as to Form for the Reliance
of Lee County Port Authority Only:

By: _____
Port Authority Attorney's Office

Signed, Sealed and Delivered
in the presence of:

PROVIDER:
UNITED DATA TECHNOLOGIES, INC.



Witness


Witness



Authorized Signature
Title: VP Major Accounts

SEAL

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve the use of Florida State contract 43220000-NASPO-19-ACS to purchase network equipment needed for the Terminal Expansion Project at Southwest Florida International Airport in an amount not to exceed \$945,031 which includes 10% contingency.
2. **FUNDING SOURCE:** RSW Construction account string 20859541236.506542
3. **TERM:** TBD
4. **WHAT ACTION ACCOMPLISHES:** Authorizes the Port to purchase network switches and servers utilizing a competitively solicited contract.

5. **CATEGORY:** 21.
Administrative Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. AGENDA:

- CEREMONIAL/PUBLIC PRESENTATION
 CONSENT
 ADMINISTRATIVE

9. REQUESTOR OF INFORMATION:

(ALL REQUESTS)

NAME Brian McGonagle

DIV. Administration

10. BACKGROUND:

On September 21, 2021, the Board authorized the construction of the Terminal Expansion project at the Southwest Florida International Airport. Included in the project are several new telecommunications rooms, many new security cameras and associated video storage, and Wi-Fi access points. To reduce hardware and contract labor costs, ensure compatibility with the existing airport network and to reduce the possibility of configuration errors and possible network performance degradation, the LCPA IT will direct purchase and install the hardware.

Total one-time cost for the network hardware is \$945,031 which includes a 10% contingency. After review, the LCPA Purchasing department determined that the Authority would be able to take advantage of competitive pricing solicited by the Florida State Department of Management Services and save administrative costs from not having to conduct its own solicitation.

Attachments:

- Written Determination
- Airport Expansion-State Contract Pricing for Cisco Hardware
- Cisco Tech Products for Terminal Expansion Piggyback Agreement

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<i>Benjamin R. Siegel</i>

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

- APPROVED
 APPROVED as AMENDED
 DENIED
 OTHER

13. PORT AUTHORITY ACTION:

- APPROVED
 APPROVED as AMENDED
 DENIED
 DEFERRED to
 OTHER

LEE COUNTY PORT AUTHORITY UTILIZATION OF OTHER COMPETITIVELY PROCURED CONTRACTS

<p>Date: <u>09/24/2021</u></p> <p>Vendor: <u>Cisco Systems</u> <u>Network System Equipment</u></p> <p>Description: <u>for Terminal Expansion</u></p> <p>Term: <u>6/9/21 – 9/30/24</u></p> <p>Renewal Term: <u>None</u></p> <p>Proc. Agent: <u>Stephanie Pawlowski</u> <u>State of Florida Contract</u></p> <p>Contract #: <u>3220000-NASPO-19-ACS</u></p>	<p>Board Approval Req: <input checked="" type="checkbox"/> Yes / No <input type="checkbox"/></p> <p>Lead Agency: <u>NASPO/State of Utah</u></p> <p>Posting Req'd: <input checked="" type="checkbox"/> Yes / No <input type="checkbox"/></p> <p><input checked="" type="checkbox"/> Single Purchase – Total Cost : <u>859,119.46</u></p> <p><input type="checkbox"/> Estimated Purchase -Est'd Annual cost: <u>n/a</u></p> <p>Cost (this purchase): <u>n/a</u></p> <p>Balance: <u>n/a</u></p>
---	--

NOTICE OF WRITTEN DETERMINATION

A contract may be awarded for a commodity or service when the Procurement Manager determines utilizing the contract is authorized and in the Authority's best interest based on the following findings.

Product/Service requested: Edge and core switches, network servers and wireless access points are major components of the technological infrastructure that will be included in the terminal expansion project. These items have long lead times as a result of continuing supply chain issues.

The contract has been evaluated and found to be appropriate because:


- Cooperative or Piggyback.
- Competitive requirements have been met.
- Conforms to all applicable laws and best practices.
- Specs, price, terms and conditions produce best value.
- The lead agency has been contacted and has verified eligibility.
- There are no known vendor performance or contract compliance issues.
- The vendor is appropriately insured and licensed to do business in the State of Florida.
- The term of the agreement to be piggybacked: see contract term dates above
- Other. LCPA Purchasing Manual Section 5.3 (D)

Cost Savings. The objective of the RFP issued by the State of Utah, which resulted in an Alternative Contract Source (ACS) through the state of Florida that which the Authority may use, is to obtain best value and achieve more favorable pricing than is obtainable by the Authority on its own because of the collective volume of potential purchases by numerous government entities.

Improved terms. The Authority will be able to save administrative time and transactional costs since LCPA will not conduct its own solicitation, allowing the order to be placed sooner. Supply chain issues continue to impact the purchase of technological products and are causing long lead times. This method of procurement reduces the time to receive the products.

Other. The contract pricing through the state of Florida ACS includes a 35% discount. Given that technology products generally depreciate over time and go through typical product lifecycles, it is more favorable for contract pricing to be based on minimum discounts off the offeror's commercially published pricelists versus fixed pricing. However, minimum guaranteed contract discounts do not preclude an offeror and/or its authorized resellers from providing deeper or additional, incremental discounts.

DocuSigned by:

Approved by:  Date: 10/1/2021
FA068A66127C4A5...
 Melissa M. Wendel, Procurement Manager, CPPO, NIGP-CPP

**LEE COUNTY PORT AUTHORITY
UTILIZATION OF OTHER COMPETITIVELY PROCURED CONTRACTS**

Estimated Spend Reconciliation (only required to be completed for Estimated Award Approvals)

<u>Date</u>	<u>Spend Balance</u>	<u>Purchase Amount</u>	<u>Remaining Balance</u>	<u>REQ Number</u>	<u>PO Number</u>	<u>Description of Purchase</u>	<u>Branch Plant</u>



Price Estimate

Monica Samaha
Cisco Systems, Inc.
3250 W COMMERCIAL BLVD,0
0, 0-0
UNITED STATES
Ph no:+1 2392846116

CISCO IT INTERNAL GLOBAL P
3250 W COMMERCIAL
BLVD STE 350
FORT LAUDERDALE,FL-
UNITED STATES
Ph no:+1 408 895 2003

Price Estimate for planning and information purposes only and is not a binding offer from Cisco.

Date: 10-Jun-2021

Estimate ID: MH12632446600
Deal ID: NA

All prices are shown in USD

Part Number	Smart Account Mandatory	Description	Service Duration (Months)	Estimated Lead Time (Days)	Unit List Price	Pricing Term	Qty	Unit Net Price	Disc(%)	Extended Net Price
C9300-48UXM-E	-	Catalyst 9300 48-port(12 mGig,36	---	42	12,987.49		16	8,441.87	35.00	135,069.92
C9300-NW-E-48	Yes	C9300 Network Essentials, 48-port	---	14	0.00		16	0.00	35.00	0.00
SC9300UK9-173	-	UNIVERSAL	---	14	0.00		16	0.00	35.00	0.00
PWR-C1-1100WAC-P	-	1100W AC 80+ platinum Config 1	---	28	0.00		16	0.00	35.00	0.00
PWR-C1-1100WAC-P/2	-	1100W AC 80+ platinum Config 1	---	28	1,906.65		16	1,239.32	35.00	19,829.12
CAB-TA-NA	-	North America AC Type A Power Cable	---	14	0.00		32	0.00	35.00	0.00
C9300-SSD-NONE	-	No SSD Card Selected	---	14	0.00		16	0.00	35.00	0.00
STACK-T1-50CM	-	50CM Type 1 Stacking Cable	---	14	100.35		16	65.23	35.00	1,043.68
CAB-SPWR-30CM	-	Catalyst Stack Power Cable 30 CM	---	14	95.33		16	61.96	35.00	991.36
C9300-DNA-E-48	Yes	C9300 DNA Essentials, 48-Port Term	---	14	0.00		16	0.00	35.00	0.00
C9300-DNA-E-48-7Y	-	C9300 DNA Essentials, 48-Port, 7 Year	84	N/A	2,629.17		16	1,708.96	35.00	27,343.36
C9300-NM-8X	-	Catalyst 9300 8 x 10GE Network	---	42	2,558.93		16	1,663.30	35.00	26,612.80
NETWORK-PNP-LIC	Yes	Network Plug-n-Play Connect for zero-	---	3	0.00		16	0.00	35.00	0.00
C9606R	-	Cisco Catalyst 9600 Series 6 Slot	---	21	12,042.00		2	7,827.30	35.00	15,654.60
C9600-NW-A	Yes	Cisco Catalyst 9600 Network	---	21	0.00		4	0.00	35.00	0.00
S9600UK9-173	-	Cisco Catalyst 9600 XE 17.3	---	21	0.00		2	0.00	35.00	0.00
C9600-CAMPUS-CORE	-	Catalyst 9600 Campus Core	---	21	0.00		2	0.00	35.00	0.00
C9606-FAN	-	Cisco Catalyst 9600 Series C9606	---	49	0.00		2	0.00	35.00	0.00
C9600-DNA-A	Yes	Cisco Catalyst 9600 DNA Advantage	---	21	0.00		2	0.00	35.00	0.00
C9600-DNA-A-7Y	-	Cisco Catalyst 9600 DNA Advantage 7	84	N/A	58,203.00		2	37,831.95	35.00	75,663.90
PI-LFAS-T	Yes	Prime Infrastructure Lifecycle &	---	14	0.00		6	0.00	35.00	0.00
PI-LFAS-AP-T-7Y	-	PI Dev Lic for Lifecycle & Assurance	84	N/A	0.00		6	0.00	35.00	0.00
C9600-SUP-1	-	Cisco Catalyst 9600 Series Supervisor	---	91	39,136.50		2	25,438.73	35.00	50,877.46
C9K-F2-SSD-960GB	-	Cisco Catalyst 9600 Series 960GB	---	21	7,526.25		2	4,892.06	35.00	9,784.12
C9600-SUP-1/2	-	Cisco Catalyst 9600 Series Redundant	---	91	39,136.50		2	25,438.73	35.00	50,877.46
C9K-F2-SSD-960GB	-	Cisco Catalyst 9600 Series 960GB	---	21	7,526.25		2	4,892.06	35.00	9,784.12
C9600-LC-48YL	-	Cisco Catalyst 9600 Series 48-Port	---	35	22,077.00		2	14,350.05	35.00	28,700.10
C9600-LC-48YL	-	Cisco Catalyst 9600 Series 48-Port	---	35	22,077.00		2	14,350.05	35.00	28,700.10
C9600-LC-48YL	-	Cisco Catalyst 9600 Series 48-Port	---	35	22,077.00		2	14,350.05	35.00	28,700.10
C9600-LC-48YL	-	Cisco Catalyst 9600 Series 48-Port	---	35	22,077.00		2	14,350.05	35.00	28,700.10
C9600-PWR-2KWAC	-	Cisco Catalyst 9600 Series 2000W AC	---	21	3,010.50		8	1,956.83	35.00	15,654.64
CAB-TA-NA	-	North America AC Type A Power Cable	---	14	0.00		8	0.00	35.00	0.00
NETWORK-PNP-LIC	Yes	Network Plug-n-Play Connect for zero-	---	3	0.00		2	0.00	35.00	0.00
UCSC-C240-M5SX	-	UCS C240 M5 24 SFF + 2 rear drives	---	14	4,954.40		6	3,220.36	35.00	19,322.16
CON-SNT-C240M5SX	-	SNTC 8X5XNBD UCS C240 M5 24 SFF	60	N/A	2,814.00		6	2,532.60	10.00	15,195.60
UCS-MR-X64G2RT-H	-	64GB DDR4-2933-MHz	---	14	4,478.77		36	2,911.20	35.00	104,803.20
UCSC-PCI-1-C240M5	-	Riser 1 incl 3 PCIe slots (x8, x16, x8);	---	14	199.70		6	129.81	35.00	778.86
UCSC-PCIE-ID10GF	-	Intel X710-DA2 dual-port 10G SFP+ NIC	---	14	1,879.56		6	1,221.71	35.00	7,330.26
UCSC-PCIE-BD16GF	-	Emulex LPe31002 dual port 16G FC	---	14	4,187.61		12	2,721.95	35.00	32,663.40
UCSC-PSU1-1050W	-	Cisco UCS 1050W AC Power Supply	---	14	731.55		12	475.51	35.00	5,706.12
CAB-9K12A-NA	-	Power Cord, 125VAC 13A NEMA 5-15	---	7	0.00		12	0.00	35.00	0.00
UCSC-RAILB-M4	-	Ball Bearing Rail Kit for C220 & C240	---	14	220.77		6	143.50	35.00	861.00
CIMC-LATEST	-	IMC SW (Recommended) latest release	---	14	0.00		6	0.00	35.00	0.00
UCS-SID-INFR-UNK	-	Unknown	---	14	0.00		6	0.00	35.00	0.00
UCS-SID-WKL-OW	-	Other Workload	---	14	0.00		6	0.00	35.00	0.00
UCSC-HS-C240M5	-	Heat sink for UCS C240 M5 rack	---	14	0.00		12	0.00	35.00	0.00
CBL-SC-MR12GM5P	-	Super Cap cable for UCSC-RAID-M5HD	---	14	0.00		6	0.00	35.00	0.00
UCSC-PCIF-240M5	-	C240 M5 PCIe Riser Blanking Panel	---	14	0.00		6	0.00	35.00	0.00
UCSC-BBLKD-S2	-	UCS C-Series M5 SFF drive blanking	---	14	0.00		144	0.00	35.00	0.00
UCSC-SCAP-M5	-	Super Cap for UCSC-RAID-M5, UCSC-	---	14	0.00		6	0.00	35.00	0.00
UCS-CPU-I5218R	-	Intel 5218R 2.1GHz/125W 20C/27.5MB	---	14	5,217.20		12	3,391.18	35.00	40,694.16
UCSC-RAID-M5HD	-	Cisco 12G Modular RAID controller with	---	14	2,910.15		6	1,891.60	35.00	11,349.60
UCS-M2-240GB	-	240GB SATA M.2	---	14	536.87		12	348.97	35.00	4,187.64
UCS-M2-HWRAID	-	Cisco Boot optimized M.2 Raid	---	14	299.04		6	194.38	35.00	1,166.28
UCS-SD480GM1X-EV	-	480 GB 2.5 inch Enterprise Value 6G	---	14	1,305.55		12	848.61	35.00	10,183.32
MR56-HW	-	Meraki MR56 Wi-Fi 6 Indoor AP	---	3	1,855.47		20	1,206.06	35.00	24,121.20
MR46E-HW	-	Meraki MR46E Wi-Fi 6 Indoor AP w	---	3	1,454.07		6	945.15	35.00	5,670.90
MA-ANT-3-F6	-	Meraki Indoor Dual-band Narrow Patch	---	3	1,473.85		6	958.00	35.00	5,748.00
MR86-HW	-	Meraki MR86 Wi-Fi 6 Outdoor AP	---	3	2,256.87		2	1,466.97	35.00	2,933.94
MA-ANT-27	-	Meraki Dual Band Sector Antenna	---	3	350.22		4	227.64	35.00	910.56
LIC-ENT-7YR	-	Meraki MR Enterprise License, 7YR	---	3	632.21		28	410.94	35.00	11,506.32

Valid through:
FOB Point: None

Product Total 740,916.60
Service Total : 15,195.60
Subscription Total 103,007.26
Total Price: **859,119.46**

Notes

Signed: _____

Monica Samaha

"This Price Estimate does not constitute an offer by CISCO to sell products, but is instead an invitation to issue a purchase order to CISCO until the valid date specified in this price estimate. Such a purchase order will be subject to Cisco's standard procedures, terms and conditions for the acceptance of purchase orders. This order may be subject to indirect tax (VAT, GST, sales tax or other indirect taxes), duty and freight charges even if not noted on this estimate."

Contract Number _____
Vendor Number _____

LEE COUNTY PORT AUTHORITY

Data Communications Products and Services

AGREEMENT

This Agreement ("Agreement") is entered this ____ day of _____, 2021, 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 CISCO SYSTEMS INC., a California corporation, authorized to do business in the State of Florida, ("Provider"), at 170 West Tasman Drive, San Jose, California 95134, Federal Identification Number 77-0059951.

WITNESSETH

WHEREAS, Authority requires a source of supply to obtain data communication products and services on an as needed basis to support operations at the Southwest Florida International Airport ("RSW") or Page Field ("FMY") in Fort Myers, Florida; and,

WHEREAS, Provider entered into an agreement between Provider and State of Utah ("Source Contractor") pursuant to formal competitive solicitation RFP SK18001, attached hereto as Exhibit A, Source Agreement. The State of Florida was included in the agreement as a participating agency and has entered into a participating amendment with the Provider under 43220000-NASPO-19-ACS; and,

WHEREAS, both Provider and Source Contractor have agreed that the terms and pricing of the Source Agreement may be utilized by other state and local governments to obtain similar goods and services; and,

WHEREAS, 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, Provider has reviewed the goods and/or services required under this Agreement and has agreed to provide the requested goods and services, 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.

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 SOURCE AGREEMENT – INCORPORATION BY REFERENCE

Provider agrees to provide the products and services as stated in Exhibit A, Source Agreement. It is the intent of the parties to allow Authority to "piggyback" the Source Agreement, as permitted by that Agreement and the Lee County Port Authority Purchasing Manual. The terms of the Source Agreement are hereby merged into and incorporated by reference as part of this Agreement. If there are any conflicts between the terms of the Source Agreement and this Agreement and Exhibit(s), the terms of this Agreement will control.

3.0 TERM OF AGREEMENT

The term of this Agreement begins on the first date written above ("Effective Date") and will continue for the duration of the Source Agreement, including renewals or extensions thereof.

4.0 COMPENSATION

Authority will pay for all requested and authorized goods provided or services completed in accordance with the requirements, provisions, and/or terms of this Agreement based on the schedule set forth in Exhibit B, attached hereto and made a part of this Agreement.

5.0 EXCEPTIONS

Exceptions to the Source Agreement, if any, are specifically amended as set forth in Exhibit C, attached hereto and made a part of this Agreement.

6.0 NOTICES AND ADDRESS

All notices required and/or made pursuant to this Agreement will be in writing and will be given by the United States Postal Service, to the following addresses of record:

If to the Authority:
LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Attention: Airport Executive Director

If to the Provider:
Cisco Systems Inc.
170 West Tasman Drive
San Jose, California 95134
Attention: Cody Lynch

7.0 GOVERNING LAW AND VENUE

This Agreement will be interpreted, construed and governed by the laws of the State of Florida. Exclusive venue for any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement will be in the Lee County Circuit Court in Lee County, Florida. The parties agree to waive the right to remove any suit or action relating to or arising out of this Agreement to federal court. The prevailing party in any such suit or action, including any appellate proceedings, will be entitled to recover its reasonable attorneys' fees and costs.

8.0 ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties in the space provided.

[Remainder of Page Intentionally Left Blank]

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

ATTEST: LINDA DOGGETT
Clerk of the Circuit Court

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair or Vice Chair

Approved as to Form for the Reliance
of Lee County Port Authority Only:

By: _____
Port Authority Attorney-s Office

Signed, Sealed and Delivered

Cisco Systems Inc.

Witness

Authorized Signature for Provider

Witness

By: _____
Printed Name

SEAL

Title



STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the Utah Division of Purchasing and the following Contractor:

Cisco Systems, Inc.

Name

170 West Tasman Dr.

Street Address

San Jose

CA

95134

City

State

Zip

Vendor # VC0000118462 Commodity Code #: 920-05 Legal Status of Contractor: For-Profit Corporation

Contact Name: Mimi Nguyen-Farr, Sr Manager Phone Number: (408) 527-2627 Email: mimnguye@cisco.com

2. CONTRACT PORTFOLIO NAME: Data Communications Products and Services.

3. GENERAL PURPOSE OF CONTRACT: Provide Data Communications Products and Services for the Award Categories provided in Attachment B – Scope of Work.

4. PROCUREMENT: This contract is entered into as a result of the procurement process on FY2018, Solicitation# SK18001.

5. CONTRACT PERIOD: Effective Date: Tuesday, October 01, 2019. Termination Date: Monday, September 30, 2024 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal Options: Two (2) one year renewal options.

6. Administrative Fee (if any): Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) of contract sales no later than 60 days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on sales of the Services.

7. Prompt Payment Discount Details (if any): N/A.

8. ATTACHMENT A: NASPO ValuePoint Master Terms and Conditions, including the attached Exhibits
ATTACHMENT B: Scope of Services Awarded to Contractor
ATTACHMENT C: Pricing Discounts and Value Added Services
ATTACHMENT D: [Reserved]

Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.

9. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah Procurement Code, Procurement Rules, and Contractor's response to solicitation # SK18001.

10. Each signatory below represents that he or she has the requisite authority to enter into this contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided within Section 5 above.

CONTRACTOR

DIVISION OF PURCHASING

Jenn Pate

August 30, 2019

[Signature]

Sep 4, 2019

Contractor's signature

Jenn Pate

Date

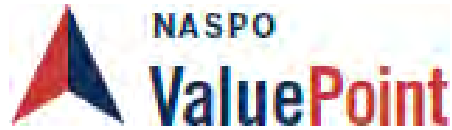
Director, Division of Purchasing

Date

Authorized Signatory

Type or Print Name and Title

APPROVED BY LEGAL



Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

- a. Any Order placed under this Master Agreement shall consist of the following documents:
 - (1) A Participating Entity's Participating Addendum ("PA");
 - (2) NASPO ValuePoint Master Agreement Terms & Conditions;
 - (3) A Statement of Work, including a Service Level Agreement contained within the Statement of Work;
 - (4) The Solicitation; and
 - (5) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2. Definitions

Unless otherwise provided in this Master Agreement, capitalized terms will have the meanings given to those terms in this section.

Administrative Data means data related to Purchasing Entity's employees or representatives used to administer or manage Purchasing Entity's use of the Cloud Software. Administrative Data may include Personal Data and information about contractual commitments, whether collected at the time of the initial registration or thereafter.

Cloud Software means a Contractor-hosted software offering as described in the applicable Cloud Offering Description purchased by Purchasing Entity; Purchasing Entity's license to use Cloud Software is set forth in Exhibit 1.

Contractor means the person or entity directly delivering Products or performing services under the terms and conditions set forth in this Master Agreement or through its approved Fulfillment Partners.

Data Breach means any actual, or reasonably suspected by Contractor's information technology security teams, non-authorized access to or acquisition of computerized Purchasing Entity Data or Personal Data that compromises the security, confidentiality, or integrity of the Non-Public Data or Personal Data, or the ability of Purchasing Entity to access the Purchasing Entity Data or Personal Data.

Disabling Code means computer instructions or programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without

manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the Purchasing Entity's software, applications and/or its end users processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

Embedded Software means one or more software applications which are installed and reside on a computing device owned by Purchasing Entity; Purchasing Entity's license to use Embedded Software is set forth in Exhibit 1.

Fulfillment Partner means a third-party contractor or reseller qualified and authorized by Contractor, and approved by the Participating Entity under a Participating Addendum, who may, to the extent authorized by Contractor, fulfill any of the requirements of this Master Agreement including but not limited to providing Services under this Master Agreement and billing Purchasing Entity directly for such Services. Contractor may, upon written notice to the Participating Entity, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Master Agreement or to bind Contractor to any additional terms and conditions.

Intellectual Property means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

Lead State means the State centrally administering any resulting Master Agreement(s).

Master Agreement means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

Order or Purchase Order means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products and/or Services as authorized under the Master Agreement and Participating Addenda. For clarification purposes, —Blanket Purchase Order” is excluded from the scope of this Master Agreement. —Blanket Purchase Order” is an order that contains multiple delivery dates scheduled during the term of and/or post the expiration date of the Master Agreement, often negotiated to take advantage of predetermined or to lock-in pricing (i.e. from older Contractor pricelists).

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state in the United States of America, or other public sector legal entity (i.e. political subdivisions such as municipalities and counties, and K-12 and higher education institutions) in the United States of America, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States who has the authority to execute a Participating Addendum to this Master Agreement. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposal is not required to participate through execution of a Participating Addendum.

Personal Data means data alone or in combination that includes information relating to an individual that identifies the individual by name, identifying number, mark or description can be readily associated with a

particular individual and which is not a public record. Personal Information may include the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or Protected Health Information (PHI) relating to a person.

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

Purchasing Entity Data means all information, whether in oral or written (including electronic) form, created by or in any way originating with a Participating Entity or Purchasing Entity provided or transferred to Contractor in the course of using the Services or Cloud Software provided under this Agreement. Purchasing Entity Data includes Administrative Data and does not include Telemetry Data or Statistical Data.

Services mean services that are in scope of this Master Agreement and are supplied or created by the Contractor pursuant to this Master Agreement (to include the attached Services Exhibit in Exhibit 2).

Security Incident means the actual or reasonably suspected by Contractor's information technology security teams, unauthorized access to Purchasing Entity Data and Personal Data that Contractor believes could reasonably result in the use, disclosure or theft of a Purchasing Entity's Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach.

Service Level Agreement (SLA) means a written agreement between both the Purchasing Entity and the Contractor that is subject to the terms and conditions in this Master Agreement and relevant Participating Addendum (unless otherwise expressly agreed in writing between the Purchasing Entity and the Contractor). A Service Level Agreement may be memorialized within a Statement of Work for the Services. SLAs should include: (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) remedies, such as credits, and (5) an explanation of how remedies or credits are calculated and issued. Not every Service provided under this Master Agreement need be covered by a SLA.

Solicitation means the documents used by the State of Utah, as the Lead State, to obtain Contractor's Proposal.

Statement of Work means a written document agreed between Contractor and Purchasing Entity that defines Services and deliverables to be provided to Purchasing Entity.

Software means the binary image of Contractor computer programs (including Upgrades) which could be a downloadable file, delivered on physical media, pre-installed on the on-premise computer system, resident in ROM/Flash (system memory) or cloud-hosted and purchased from Contractor. Software may be either Embedded Software or Cloud Software. Purchasing Entity's license to use Software is set forth in Exhibit 1.

Statistical Data means any information/data that Contractor derives from Purchasing Entity Data and/or Telemetry Data, provided that such information/data is aggregated and/or de-identified such that it cannot reasonably be used to identify an individual or entity.

Telemetry Data means information generated by instrumentation and logging systems created through the use and operation of Contractor products and services.

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

- a. The initial term of this Master Agreement is for five (5) years. This Master Agreement may be extended beyond the original contract period for two (2) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.
- b. The Master Agreement may be extended for a reasonable period of time, not to exceed six (6) months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

5. Participants and Scope

- a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.
- b. Use of specific NASPO ValuePoint's Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of each Participating Addendum. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.
- d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts,

counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

- e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Purchasing Entity. Any such language shall be void and of no effect.
- f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- g. **Resale.** —“Resale” means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor’s proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products when purchased for the Purchasing Entity; sales of hardware Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity’s laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property. The transfer of licenses to software shall be subject to Contractor’s then-current software transfer and relicensing policy.

6. Administrative Fees

- a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.
- b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the sum of all sales at Net Purchase Price at the adjusted prices (if any) in Participating Addenda, where —“Net Purchase Price” is the Contractor’s list price for an approved product or service minus all applicable contract discounts, rebates or value added incentives, and excluding sales, use or other applicable taxes, surcharges or like fees, to the extent applicable to an Order.

7. NASPO ValuePoint Summary and Detailed Usage Reports

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

- a. **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at

<http://calculator.naspovaluepoint.org>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than sixty (60) days following the end of the calendar quarter (as specified in the reporting tool).

- b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/Purchasing Entity type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in Attachment H of the Solicitation.
- c. Sales under Contractor's master agreement are intended for commercial, enterprise and government use only. Sales to employees for personal use are prohibited. [RESERVED].
- d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.
- e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

- a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master Agreement and Participating Addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- b. Contractor agrees, as Participating Addenda become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider Purchasing Entity's proposed terms and conditions, as deemed important to the Purchasing Entity, for possible inclusion into the Purchasing Entity agreement. Contractor will ensure that their sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, terminate the Master Agreement pursuant to section 35 or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Termination based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to terminate the Master Agreement pursuant to Section 35 or to terminate for default pursuant to Section 37

9. NASPO ValuePoint eMarket Center

- a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's Purchasing Entities' to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.
- b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide Purchasing Entity's information regarding the Contractor's website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.
- c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the Purchasing Entity to have.
- d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

10. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan; nor does the limitation preclude Contractor providing limited information as necessary for Contractor to perform its duties or secure or exercise any rights under the Master Agreement. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

11. Price and Rate Guarantee Period

All pricing must be guaranteed for the first year of the Master Agreement.

Following the guarantee period, any request for price increases must be for an equal guarantee period (1 year), and must be submitted to the Lead State at least thirty (30) calendar days prior to the effective date. The Lead State will review a documented request for an MSRP price list increase only after the Price Guarantee Period. Requests for price increases must include sufficient documentation supporting the request and demonstrating a reasonableness of the adjustment when comparing the current price list to the proposed price list. Documentation may include: the manufacturers national price increase

announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase.

No retroactive price increases will be allowed.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published commercial price list, including renewal options, the Lead State shall be notified immediately. All published commercial price list price reductions shall be effective upon the notification provided to the Lead State.

12. Individual Purchasing Entities

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

Administration of Orders

13. Ordering and Orders

- a. Lead State desires that the Master Agreement identifier and purchase order numbers be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence. Any such information will be per Contractor's existing free form structure, without customization. The purchase order numbers reflect Contractor's Fulfillment Partner purchase order numbers; however, Contractor will request that its Fulfillment Partners use reasonable efforts to provide the Purchasing Entity's Purchase Order number in the free form notes.
- b. Contractor reserves the right to require that purchases be made through Fulfillment Partners. Where so required by Contractor, Purchasing Entities shall not order Products and/or Services directly from Contractor and shall order same from Fulfillment Partner. Purchasing Entity shall purchase Products and/or Services by issuing a written or electronic Purchase Order, signed or (in the case of electronic transmission) sent by its authorized representative, indicating specific products, quantity, unit price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and any other special instructions.
- c. Any contingencies on Purchasing Entity's Purchase Orders are not binding upon Contractor. The terms and conditions of this Master Agreement and applicable Participating Addendum prevail, regardless of any additional or conflicting terms on the Purchase Order, or other correspondence from Purchasing Entity to Contractor and any additional or conflicting terms are deemed rejected by Contractor unless Contractor has expressly agreed to such terms in writing. Mere acceptance or processing of a Purchase Order or Order containing such terms shall not constitute such express consent.
- d. All Purchase Orders are subject to Contractor's reasonable acceptance (including performing any related credit checks). Contractor shall use commercially reasonable efforts to accept or reject orders in writing within ten (10) days from receipt, or within three (3) business days, if orders are placed electronically.
- e. Purchasing Entity may defer product shipment up to thirty (30) days from the originally scheduled shipping date, provided written notice is received by Contractor at least ten (10) days before the originally scheduled shipping date. Cancelled orders, rescheduled deliveries, or product configuration changes made by Purchasing Entity less than ten (10)

days before the original shipping date are subject to Contractor's acceptance and a charge of fifteen percent (15%) of the total invoice amount relating to the affected Product(s). Contractor reserves the right to reschedule delivery due to configuration changes made within ten (10) days of scheduled shipment. No cancellation shall be accepted by Contractor where products are purchased with implementation services, including but not limited to design, customization, or installation services, except as may be set forth in the agreement or Statement of Work under which the services are to be rendered. Notwithstanding anything to the contrary, if Contractor is delayed in shipping the product for thirty (30) days or more from the original shipping date, the Purchasing Entity may cancel the order without charge.

- f. Services. Purchasing Entity may place Purchase Orders for the various services offered by Contractor. The provision of any such services, if accepted by Contractor, shall be subject to the terms and conditions set forth in this Agreement, including the Services Exhibit attached hereto as Exhibit 2, as well as the then-current terms of service offerings set forth on Contractor's website at <https://www.cisco.com/c/en/us/about/legal/service-descriptions.html>. Contractor reserves the right to subcontract services to a third party organization to provision services for Purchasing Entity.
- g. All stated prices are exclusive of any taxes, fees, and duties or other similar amounts, however designated, and including without limitation value added, sales and withholding taxes which are levied or based upon such prices, charges, or upon this Master Agreement. Purchasing Entity will pay sales and use taxes, if any, imposed on the Products and Services acquired under this Master Agreement, or furnish proof of its tax-exempt status upon request. Contractor will pay all other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. In the event that the Purchasing Entity is exempt from property and sales taxes, it will not be charged same.
- h. Notwithstanding anything contained in the Master Agreement to the contrary, modifications which Contractor deems necessary to comply with specifications, changed safety standards or governmental regulations, to make the product non-infringing with respect to any patent, copyright, or other proprietary interest, or to otherwise improve the product may be made at any time by Contractor without prior notice to or consent of Purchasing Entity or NASPO, and such altered product shall be deemed fully conforming. Contractor shall employ commercially reasonable efforts to announce, including by electronic posting, product discontinuance or changes other than those set forth in the previous sentence in accordance with Contractor's End-of-Life Policy, which is found at the following URL: <http://www.cisco.com/c/en/us/products/eos-eol-policy.html> Purchasing Entity may make a last-time purchase of such products as set forth in such policy.
- i. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as-seeded" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors and/or Fulfillment Partners should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- j. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor and/or Fulfillment Partner as applicable is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- k. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- l. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

- m. All Orders pursuant to this Master Agreement, at a minimum, shall include:
- (1) The services or supplies being delivered;
 - (2) The place and requested time of delivery;
 - (3) A billing address;
 - (4) The name, phone number, and address of the Purchasing Entity representative;
 - (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
 - (6) A ceiling amount of the order for services being ordered; and
 - (7) The Master Agreement identifier.
- n. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- o. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Maintenance agreements may have terms as prescribed in Section 27. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- p. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after or extend after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Shipping and Delivery

- a. The prices are the delivered price to any Purchasing Entity. All deliveries for hardware Products shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges pre-paid by the Contractor, for the standard shipping time intervals. Expedited shipping and/or a special delivery request that are non-standard delivery beyond docking areas at warehouses or designated delivery drop-offs locations at buildings (i.e. delivery of the Order, including pallets, to a closet, designated rooms, etc.) will result in additional charges to the Purchasing Entity. Title for hardware Products and risk of loss shall pass to the Purchasing Entity upon delivery. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice.
- b. Any damage to a building interior, scratched walls, damage to the freight elevator, etc., negligently caused by Contractor will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.
- c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents.
- d. Scheduled shipping dates will be assigned by Contractor as close as practicable to Purchasing Entity's requested date based on Cisco's then-current lead times for the Products. Contractor will use commercially reasonable efforts to ship all direct orders designated for shipment to U.S. locations within thirty (30) days for hardware Products. The following circumstances may affect lead times: (i) new products purchased within the first three (3) months of release of the product which are subject to Contractor's then current published lead-times, (ii) third-party stand-alone products which are not a component of equipment resold by Contractor, (iii) end-of-life products where the termination of the product has been announced by Contractor, (iv) products which have been line-

stopped due to software discrepancies, reconfiguration, industry-wide product shortages, or alleged infringement claims, or (vi) situations where government rated orders create delays in lead-times. Notwithstanding the foregoing, at any time when Purchasing Entity states "expedite" on an order for a hardware Product or otherwise communicates to Contractor that an order is to be expedited, Contractor shall use all commercially reasonable efforts to ensure the earliest possible delivery of such products.

- e. Contractor will communicate scheduled shipping dates in the order acknowledgement or on www. Cisco.com within three (3) business days after receipt of an electronic order on www.cisco.com, provided, however, that in the event such notification is not received in this time period, Purchasing Entity shall notify Contractor of the non-receipt, and Contractor's sole obligation with respect to such non- receipt shall be to promptly provide the information to the Purchasing Entity after such notification.
- f. If Contractor has reason to believe that the actual shipment date will occur later than the original shipment date acknowledged by Contractor for reasons caused by Contractor, Contractor shall use commercially reasonable efforts to promptly provide additional information to Purchasing Entity including by electronic posting of the expected period of delay and, upon request, of the steps available, if any, to minimize the delay. If the extended delivery date is anticipated to be more than thirty (30) calendar days beyond the originally scheduled delivery date, the parties will work in good faith to resolve any ordering issues.
- g. Purchasing Entity shall assume responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation necessary for export clearance. This also applies in cases where Purchasing Entity requests delivery of hardware Products to Purchasing Entity's forwarding agent. Purchasing Entity agrees not to use any export licenses owned by Contractor.
- h. Contractor is not liable for damage or penalty for delay in delivery or for failure to give notice of delay.
- i. All sales are final. Except for return remedies set forth in the warranty statements, Contractor only permits the return of unopened hardware Products due to Contractor's shipping or order processing errors, or damage in transit. No other returns are authorized. The return of hardware Product must be in accordance with Contractor's return policy and procedures. Warranty returns will not be subject to any restocking fees.

15. Laws and Regulations

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

16. Inspection and Acceptance

Purchasing Entity has thirty (30) days after hardware Product delivery to inspect the hardware Product for external damage and for any concealed damage ("Acceptance Period"). If external or concealed damage is revealed during the Acceptance Period, then Purchasing Entity shall notify Contractor. At Contractor's option, Contractor shall (i) repair such damage, (ii) ship a replacement, or (iii) refund the purchase price (upon return of the hardware Product). After such Acceptance Period the Products shall be deemed accepted. Acceptance does not relieve the Contractor of liability or responsibility under Contractor's warranty obligation for the hardware Product.

17. Payment

Upon and subject to credit approval by Contractor, payment is due 30 days the date of the invoice. Invoices for products ordered without implementation services shall be rendered by Contractor on or after the date of delivery of such products to the Purchasing Entity. Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. If at any time Purchasing Entity is delinquent in the payment of any invoice, or is otherwise

in breach of this Agreement, Cisco may, in its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order, require Purchasing Entity to prepay for further shipments, and/or withhold the provision of Services, until complete payment has been received. Purchasing Entity grants Cisco a security interest in Products purchased under this Agreement to secure payment for such Products. If requested by Cisco, Purchasing Entity agrees to execute financing statements to perfect this security interest. Payments will be remitted by mail. Payments may be made via a State or political subdivision —Purchasing Card” to Fulfillment Partners under this contract.

18. Warranty

All hardware Products are sold, Software licensed, and Services delivered with Contractor’s standard limited warranty as set forth below.

- a. Hardware Products. Contractor warrants that from the date of shipment by Contractor to Purchasing Entity, and continuing for a period of the longer of (a) ninety (90) days or (b) the period set forth in the warranty card accompanying the product or at <https://www.cisco.com/go/warranty>, the hardware Product will be free from defects in material and workmanship, under normal use. This limited warranty extends only to the original user of the product. Purchasing entity’s sole and exclusive remedy and the entire liability of Contractor and its suppliers under this limited warranty will be, at Contractor’s or its service center’s option, (i) shipment of a replacement within the period and according to the replacement process described in the warranty card (if any) or if no warranty card, as described at <https://www.cisco.com/go/warranty>, or (ii) a refund of the purchase price, if the hardware Product is returned to the party supplying it to Purchasing Entity, if different than Contractor, freight and insurance prepaid. Contractor replacement parts, used in the replacement of hardware Products, may be new or equivalent to new. Contractor’s obligations hereunder are conditioned upon the return of affected products, in accordance with Contractor’s then- current return procedures. This limited warranty does not apply if the hardware Product (i) has been altered, except by Contractor or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (iv) is licensed or provided for beta, evaluation, testing or demonstration purposes.
- b. Embedded Software Products. Contractor warrants that Embedded Software will substantially conform to the applicable documentation of the Embedded Software for the longer of (i) ninety (90) days following the date the Embedded Software is made available to Purchasing Entity for use or (ii) as otherwise set forth at <http://www.cisco.com/go/warranty>. This warranty does not apply if the Embedded Software, the hardware Product supplied by Contractor, or any other equipment upon which the Embedded Software is authorized to be used: (i) has been altered, except by Contractor or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Contractor, (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (iv) is licensed for beta, evaluation, testing or demonstration purposes or other circumstances for which there is not payment of a purchase price or license fee; or (v) has not been provided by an authorized reseller of Contractor. Cisco will use commercially reasonable efforts to deliver to Embedded Software free from any viruses, programs, or programming devices designed to modify, delete, damage or disable the Embedded Software or data. At Contractor’s option and expense, Contractor shall repair, replace, or cause the refund of the license fees paid for the non-conforming Embedded Software. This remedy is conditioned on Purchasing Entity reporting the non-conformance in writing to Contractor within the warranty period. Purchasing Entity may be required to return the Embedded Software, the Contractor hardware product, and/or Documentation as a condition of this remedy. This is Purchasing Entity’s sole and exclusive remedy under this warranty for Embedded Software. Except as set forth herein, Embedded Software are provided —as is”. Contractor does not warrant that Embedded Software will operate uninterrupted or error-free or that all errors will be corrected. In addition, Contractor does not warrant that the Embedded Software or any equipment, system or network on which the Embedded Software is used will be free of vulnerability to intrusion or attack.

- c. Cloud Software Products. Unless otherwise provided for in the applicable Cloud Offer Description, Contractor warrants that it will provide the Cloud Software in accordance with the Cloud Offer Description using commercially reasonable skill and care. Upon prompt notification by Purchasing Entity of Contractor's breach of this warranty, to the extent permitted by applicable law, Contractor will, at Contractor's option, (i) repair or replace the Cloud Software or (ii) refund fees paid to Contractor for the period in which the Cloud Software did not materially comply with the Cloud Offer Description. This is Purchasing Entity's sole and exclusive remedy under this warranty for Cloud Software.
- d. Services. Contractor warrants that Services sold under this Agreement pursuant to Exhibit 2 will be performed in a workmanlike manner and, where applicable, will materially comply with the applicable Service Description. Purchasing Entity must promptly notify Contractor of a breach of this warranty. Purchasing Entity's sole and exclusive remedy for any breach of this warranty shall be, at Contractor's option, (i) reperformance of the Services or (ii) termination of the applicable Service, and return of the portion of the fees paid to Contractor by Purchasing Entity for such non-conforming Services
- e. DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 18, CONTRACTOR HEREBY DISCLAIMS ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY, OR SYSTEM INTEGRATION, OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY OR CONDITION IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD.

19. Title of Product

Title to hardware Products and risk of loss shall pass to Purchasing Entity upon delivery. To the extent the transfer of title to the hardware Product includes a license to use any Embedded Software in the hardware Product subject to the terms of the End User License Agreement set forth in Exhibit 1. If Purchasing Entity subsequently transfers title of the hardware Product to another entity, transfer of the license to use the Embedded Software shall be subject to Contractor's then-current software transfer and relicensing policy.

20. License of Pre-Existing Intellectual Property

Contractor grants to Purchasing Entity a license to Software pursuant to the license terms and restrictions set forth in Exhibit 1.

21. No Guarantee of Service Volumes

The Contractor acknowledges and agrees that the Lead State and NASPO ValuePoint makes no representation, warranty or condition as to the nature, timing, quality, quantity or volume of business for the Services or any other products and services that the Contractor may realize from this Master Agreement, or the compensation that may be earned by the Contractor by offering the Services. The Contractor acknowledges and agrees that it has conducted its own due diligence prior to entering into this Master Agreement as to all the foregoing matters.

22. Purchasing Entity Data

Purchasing Entity retains full right and title to Purchasing Entity Data provided by it. Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding Purchasing Entity's use of the Service that can be identified to Purchasing Entity may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. The obligation shall extend beyond the term of this Master Agreement in perpetuity.

23. System Failure or Damage

In the event of system failure or damage caused by Contractor or its Services, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

24. [RESERVED].

25. Data Privacy

The Contractor must comply with all applicable laws related to data privacy and security, including IRS Pub 1075. Prior to entering into a Statement of Work with a Purchasing Entity for the processing of such data, at the request of the Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold a meeting to determine the data categorization to determine what data the Contractor will hold, store, or process. To the extent applicable and reasonable, the Contractor must document the data categorization in the Statement of Work.

26. Transition Assistance

- a. The Contractor shall reasonably cooperate with other parties in connection with all Services to be delivered under this Master Agreement, including without limitation any successor service provider to whom a Purchasing Entity's Data is transferred in connection with the termination or expiration of this Master Agreement. Only as set forth in a Services SOW under this Agreement, the Contractor shall assist a Purchasing Entity in exporting and extracting a Purchasing Entity's Data, in a format usable without the use of the Services and as agreed by a Purchasing Entity. Any transition services requested by a Purchasing Entity involving additional knowledge transfer and support may be subject to a separate transition Statement of Work.
- b. A Purchasing Entity and the Contractor shall, when reasonable, create a Transition Plan Document identifying the transition services to be provided and including a Statement of Work if applicable.
- c. The Contractor must maintain the confidentiality and security of a Purchasing Entity's Data during the transition services and thereafter as required by the Purchasing Entity.

27. Performance and Payment Time Frames that Exceed Contract Duration

All maintenance or other agreements for services entered into during the duration of an SLA and whose performance and payment time frames extend beyond the duration of this Master Agreement shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new leases, maintenance or other agreements for services may be executed after the Master Agreement has expired.

General Provisions

28. Insurance

- a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- b. Coverage shall be written on an occurrence basis. The limits required shall be as indicated below:
 - (1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of \$1 million per occurrence/\$3 million general aggregate provided that such limit can be satisfied with any combination of primary and umbrella insurance;

- (2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
 - d. Contractor's general liability insurance shall (1) include the Participating States identified in the Request for Proposal as additional insureds for liabilities falling within Contractor's indemnity obligations under this Agreement that are otherwise covered by such insurance, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. If any of the insurance required herein is cancelled or nonrenewed, Contractor shall replace such insurance so that no lapse in coverage occurs, and shall provide a revised certificate of insurance evidencing same.
 - e. Contractor shall furnish to the Lead State copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
 - f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

29. Records Administration and Audit

- a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder. Such access will be (i) with at least ten (10) business days advance written notice, during normal business hours (ii) shall not unduly interrupt or interfere with Contractor's normal business operations, and (iii) in the event that such audit is conducted by a third party, such third party shall, prior to conducting such audit, execute a confidentiality agreement for the benefit of Contractor in a form reasonably satisfactory to Contractor.
- b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of Administrative Fees found as a result of the examination of the Contractor's records.
- c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

30. Confidentiality, Non-Disclosure, and Injunctive Relief

- a. Confidentiality. Each party acknowledges that it and its employees or agents may, in the course of dealing under this Master Agreement, be exposed to or acquire information that is confidential to the other party. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by the receiving party or its employees or agents (the "Receiving Party") in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information ("Confidential Information") of the disclosing party ("Disclosing Party"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Receiving Party) publicly known; (2) is furnished by Disclosing Party to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Disclosing Party without the obligation of confidentiality, (5) is disclosed with the written consent of Disclosing Party or; (6) is independently developed by employees, agents or subcontractors of Receiving Party who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure. Each Party shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties (other than subcontractors as necessary to perform the obligations of this Master Agreement) or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Each Party shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Each Party shall use commercially reasonable efforts to assist Disclosing Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Receiving Party shall advise Disclosing Party immediately if Disclosing Party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Receiving Party shall at its expense cooperate with Disclosing Party in seeking injunctive or other equitable relief in the name of Disclosing Party against any such person. Except as directed by Disclosing Party, Receiving Party will not at any time during or for three years after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Disclosing Party's request, Receiving Party shall turn over to Disclosing Party all documents, papers, and other matter in their possession that embody Confidential Information. Notwithstanding the foregoing, Receiving Party may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.
- c. Injunctive Relief. The parties acknowledge that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Disclosing Party that is inadequately compensable in damages. Accordingly, Disclosing Party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Receiving Party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Disclosing Party and are reasonable in scope and content.
- d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.
- e. The confidentiality obligations under this section shall also extend to (as included within the definition of Confidential Information) Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/Purchasing Entity, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to

disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to Section 29.

To the extent permitted by law, Receiving Party shall notify the Receiving Party of any entity seeking access to the Confidential Information described in this Section 30. The Receiving Party will be authorized to disclose Confidential Information as may be required by applicable law pursuant to a valid order issued by a court or government agency or relevant regulatory authority (including a stock exchange), provided that the Receiving Party provides: (i) prior written notice to the Disclosing Party of such obligation; and (ii) the opportunity to oppose such disclosure.

31. Public Information

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

32. Assignment/Subcontracts

- a. Contractor shall not assign, sell, transfer, or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State. Contractor may, with prior written consent from Participating States, which consent shall not be unreasonably withheld, enter into subcontracts with third parties as "Fulfillment Partners." Fulfillment Partners are Subcontractors who may provide products and services under this Master Agreement at the price discounts established in this Master Agreement and bill Purchasers directly for such products and services. In addition, Contractor may, without permission, utilize subcontractors to perform Services sold under this Master Agreement and provide Cloud Offers.
- b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

33. Changes in Contractor Representation

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

34. Independent Contractor

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

35. Termination

Unless otherwise stated, this Master Agreement may be terminated by either Lead State or Contractor upon 60 days written notice prior to the effective date of the termination. Further, any Participating Entity may terminate its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Termination may be in whole or in part. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of termination, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Termination of the Master Agreement due to Contractor default may be immediate.

36. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

37. Defaults and Remedies

- a. The occurrence of any of the following events by Contractor shall be an event of default under this Master Agreement:
 - (1) Nonperformance of contractual requirements; or
 - (2) A material breach of any term or condition of this Master Agreement; or
 - (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
 - (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
 - (5) Any default specified in another section of this Master Agreement.
- b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of sixty (60) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages.
- c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
 - (1) Exercise any remedy provided by law; and
 - (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
 - (4) Suspend Contractor from being able to respond to future bid solicitations; and
 - (5) Suspend Contractor's performance; and
 - (6) Withhold payment until the default is remedied.
- d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement with respect to its Participating Addendum, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity.

38. Waiver of Breach

Failure of the either party to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver must be in writing. Waiver by a party any default, right or remedy under this Master Agreement or Participating Addendum, or with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any

subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

39. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

40. Indemnification; Limitation of Liability

- a. General Indemnity - Each party shall defend, indemnify and hold harmless the other party, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, bodily injury, or damage to tangible personal property (not including lost or damaged data) arising from negligent or willful misconduct act(s), error(s), or omission(s) of the indemnifying party, its employees or subcontractors or volunteers, relating to its performance under the Master Agreement. In the event that the indemnified party's or a third party's negligent or willful misconduct acts, errors or omissions contributed to cause the injury or damage for which a claim of indemnity is being asserted against the Contractor, the damages and expenses (including, without limitation, reasonable attorneys' fees) shall be allocated or reallocated, as the case may be, between the indemnified party, the Contractor, and any other party bearing responsibility in such proportion as appropriately reflects the relative fault of such parties, or their subcontractors, or the officers, directors, employees, agents, successors, and assigns of any of them, and the liability of the Contractor shall be proportionately reduced.

The foregoing indemnification obligations are conditioned upon the indemnified party promptly notifying the indemnifying party in writing of the claim, suit, or proceeding for which the indemnifying party is obligated under this Subsection, cooperating with, assisting, and providing information to, the indemnifying party as reasonably required, and granting the indemnifying party the exclusive right to defend or settle such claim, suit, or proceeding; provided that any such settlement or compromise includes a release of the indemnified party from all liability arising out of such claim, suit or proceeding.

- b. Indemnification – Intellectual Property. The Contractor shall defend any claim against NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, or Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims by third parties that Contractor's Products provided under this Agreement, infringes patents, copyrights or trademarks ("Intellectual Property Claim") of another person or entity.
 - (1) The Contractor's obligations under this section shall not extend to the extent any Intellectual Property Claim is based on:
 - (a) compliance with any designs, specifications, requirements, or instructions by any Indemnified Party or a third party on Indemnified Party's behalf; or
 - (b) the modification of the Contractor's Product by anyone other than Contractor; or
 - (c) the amount or duration of use made of Contractor's Product, or services offered by Indemnified Party to external or internal Purchasing Entity, or revenue earned by the Indemnified Party; or
 - (d) the combination of the operation, or use of a Contractor's Product with third party products, software or business processes.
 - (2) The Indemnified Party shall notify the Contractor promptly after receiving notice of an Intellectual Property Claim. If Indemnified Party fails to notify Contractor promptly of the Intellectual Property Claim, and that failure prejudices Contractor's ability to defend, settle or respond to the Intellectual Property Claim, then Contractor's obligation to defend or indemnify Indemnified Party

with respect to that Intellectual Property Claim will be reduced to the extent Contractor has been prejudiced. In addition, such failure to provide prompt notification shall relieve Contractor of any obligation to reimburse for Indemnified Party's attorneys' fees incurred prior to notification. If the Contractor defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request, information and assistance necessary for such defense.

- (3) If an Intellectual Property Claim is made or appears likely, Indemnified Party shall permit Contractor to procure for Indemnified Party the right to continue using Contractor's Product, or to replace or modify the Contractor's Product with one that is at least functionally equivalent. If Contractor determines that none of those alternatives is reasonably available, then Indemnified Party will return and/or cease using Contractor's Product and Contractor will refund to Indemnified Party the remaining net book value of the Contractor's Product calculated according to generally accepted accounting principles.
 - (4) This Section 40(b) is Contractor's entire obligation and Indemnified Party's exclusive remedy regarding any Intellectual Property Claims.
- c. **Limitation of Liability.** Except for Contractor's obligations under Section 40(a) (General Indemnity) and Section 40(b) (Indemnification – Intellectual Property) notwithstanding anything else herein, all liability of Contractor and its suppliers to any Participating Entity (and any Purchasing Entity under the Participating Entity) for claims arising under this Agreement, the applicable Participating Addendum, or otherwise shall be limited to the greater of (i) three million dollars (\$3,000,000.00) or (ii) the money paid to Contractor by the Participating Entity under this Master Agreement in the twelve (12) month period prior to the event or circumstances that first gave rise to such liability. This limitation of liability is cumulative and not per incident.
 - d. **Waiver of Consequential Damages.** In no event shall Contractor or its suppliers be liable for any (i) special, exemplary, incidental, indirect or consequential damages, or loss of or damage to data (except for a loss of Purchaser data caused by Contractor's negligence), (ii) loss of: profits, revenue, business, anticipated savings, use of any product or service, opportunity, goodwill or reputation, or (iii) wasted expenditure (other than any expenditure necessarily incurred to discharge the innocent party's duty or to mitigate its losses)

41. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

42. Governing Law and Venue

- a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

- b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.
- c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

43. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

44. Contract Provisions for Orders Utilizing Federal Funds

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

45. Leasing or Alternative Financing Methods

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

46. Entire Agreement:

This Master Agreement, along with any attachment, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum with a Participating Entity. No click-through, or other end user terms and conditions or agreements required by the Contractor ("Additional Terms") provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative "acceptance" of those Additional Terms before access is permitted, except for those terms as referenced in this Master Agreement.

eMarket Center Appendix

- a. This Appendix applies whenever a catalog hosted by or integration of a punchout site with eMarket Center is required by the solicitation or either solution is proposed by a Contractor and accepted by the Lead State.
- b. Supplier's Interface with the eMarket Center. There is no cost charged by JAGGAER to the Contractor for loading a hosted catalog or integrating a punchout site.
- c. At a minimum, the Contractor agrees to the following:
 - (1) Implementation Timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with NASPO ValuePoint and JAGGAER to set up an enablement schedule, at which time JAGGAER's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.
 - (2) NASPO ValuePoint and JAGGAER will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. **Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by NASPO ValuePoint Participating Entity users).**
 - (a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to JAGGAER, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data no more than once per 30 days to the eMarket Center for the Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.
 - (b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update no more than once per 30 days to the Lead State stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.
- d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per year (see required Price Guarantee Period section 11). The following conditions apply with respect to hosted catalogs:
 - (1) Updated pricing files are required each calendar month of the month and shall go into effect in the eMarket Center on as approved by the Lead State contract administrator.
 - (2) Lead State-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.
- e. Supplier Network Requirements: Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use JAGGAER's Supplier Portal to import the Contractor's catalog and pricing, into the JAGGAER system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More

information about the SQSN can be found at: www.sciquest.com or call the JAGGAER Supplier Network Services team at 800-233-1121.

- f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:
 - (1) Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and
 - (2) The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract; and
 - (3) The Catalog must include a Lead State contract identification number; and
 - (4) The Catalog must include detailed product line item descriptions; and
 - (5) The Catalog must include pictures when possible; and
 - (6) The Catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different NASPO ValuePoint Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.
- g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.
- h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by JAGGAER for the suppliers and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity.
- i. Applicability: Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center and that NASPO ValuePoint may elect at any time to remove any supplier's offering from the eMarket Center.
- j. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.
- k. Several NASPO ValuePoint Participating Entities currently maintain separate JAGGAER eMarketplaces, these Participating Entities do enable certain NASPO ValuePoint Cooperative Contracts. In the event one of these entities elects to use this NASPO ValuePoint Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint to implement the catalog. NASPO ValuePoint does not anticipate that this will require substantial additional efforts by the Contractor; however, the supplier agrees to take commercially reasonable efforts to enable such separate JAGGAER catalogs.

Exhibit 1 – Additional Contractor Terms and Conditions

END USER LICENSE AGREEMENT

This End User License Agreement (the “Agreement”) governs Your Use of Cisco Software and is between You and Cisco. Please read it carefully. The Agreement includes the applicable Cloud Offer Description(s) located at <https://www.cisco.com/c/en/us/about/legal/cloud-and-software/cloud-terms.html> and SEULA(s) located at <https://www.cisco.com/c/en/us/about/legal/cloud-and-software/software-terms.html> (each, —Supplemental Terms”). Capitalized terms are defined in Section entitled “Definitions” and the order of precedence in the event of conflict is in Section 1 (“Master Agreement Order of Precedence”). Depending on whether the Software is delivered on-premise as Embedded Software or as a Cisco-hosted cloud offering of Cloud Software, certain terms herein may not apply to Your purchase.

By clicking “accept,” or Using the Software, You agree to the terms of this Agreement. You must have the authority to enter into this Agreement. If You do not have such authority, or if You do not agree with the terms of this Agreement, do not click accept and do not Use the Software. If You determine that You cannot comply with the terms of this Agreement after You have paid for the Software, You may return the Software to the Approved Source, disable or uninstall the Embedded Software and/or cease Your Use of the cloud-hosted Cloud Software and receive a full refund, provided You do so within thirty (30) days of Your initial purchase.

Section 1. License

- a. **License.** Subject to Your payment of the applicable fees to an Approved Source and compliance with this Agreement, Cisco grants You a limited, non-exclusive license to Use the Software and related Documentation for Your internal business purposes only and in accordance with any Supplemental Terms, Order and/or Entitlement. In the event that Cisco requires You to register as an end user, Your license is valid only if the registration is complete and accurate. The Embedded Software delivered for Use on-premise may contain open source software, and is subject to separate license terms. A list of such open source software and related license agreements can be found at www.cisco.com/go/opensource.
- b. **Limitations and Restrictions.** Unless expressly authorized by Cisco in writing, You will not and will not allow a third party to:
 - i. Sell, resell, transfer, sublicense, or assign Your rights under this Agreement to any other person or entity (except as expressly provided in Section 1.f below);
 - ii. modify, adapt or create derivative works of the Software or Documentation;
 - iii. reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive the source code for the Software, except as authorized by Cisco ;
 - iv. make the functionality of the Software available to third parties in a managed or network provisioned service;
 - v. Use Software that is licensed for a specific device, whether physical or virtual, on another device;
 - vi. remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks on or within the Software;
 - vii. Use the Software on secondhand and/or refurbished Cisco equipment; or
 - viii. Use the Software on third party hardware unless otherwise set forth in the Documentation (or otherwise authorized by Cisco in writing).
- c. **Your Use of Cloud-Hosted Software.** You will be responsible for the accuracy, quality and legality of Your Customer Data, the means by which You acquired Your Customer Purchasing Entity Data and Your Use of Your Customer Entity Data with our Software. You will not (i) interfere with other customer access to, or use of, the Software, or with the security of the Software; (ii) facilitate the attack or

disruption of the Software, including a denial of service (DoS) attack, unauthorized access, monitoring or crawling or distribution of malware (including but not limited to viruses, Trojan horses, worms, time bombs, spyware, adware or cancelbots), or (iii) cause an unusual spike or increase in Your use of the Software that Cisco determines fraudulently or negatively impacts the operating capability of the Software. If Your use of the Software requires or permits You to use any Cisco Content, You (and Your agents) may only use such Cisco Content with the Software and with third-party products or services offerings that Cisco has identified as compatible. You will not extract Cisco Content from or use it separate from the Software, nor will you provide Cisco Content to a third party

- d. **Third Party Use of Software.** You may allow a third party to Use the Software licensed to You solely (i) on Your behalf, (ii) for Your internal operations, and (iii) in compliance with this Agreement. You agree that You are responsible for any breach of this Agreement by that third party.
- e. **Upgrades and Additional Copies.** Notwithstanding anything else in this Agreement, You may not Use Upgrades and additional copies of the Software unless You:
 - i. hold a valid license to the Software, are in compliance with such license, and have paid the applicable fee for the Upgrade; and
 - ii. purchase the Upgrade separately or have a valid support agreement covering the Software, either as part of a subscription or purchased separately; and
 - iii. Use additional copies *solely* for backup purposes limited to archiving for restoration purposes.
- f. **Transferability/Assignment.** You may only transfer or assign Your license rights to on-premise Embedded Software to another person or entity in accordance with the current [Cisco Relicensing/Transfer Policy](#). Any transfer or assignment other than in accordance with the Transfer Policy will have no effect. Cisco may transfer or assign any of its rights or delegate any of its obligations under this Agreement in its sole discretion.
- g. **Interoperability.** If required by applicable law, Cisco will provide You with the interface information needed to achieve interoperability between the on-premise Embedded Software and another independently created program. Cisco will provide this interface information at Your written request after You pay Cisco's licensing fees (if any). You will keep this information in strict confidence and strictly follow any applicable terms and conditions upon which Cisco makes the information available.
- h. **Non-production and Trial Use.**
 - i. We may provide beta versions of the Software for you to evaluate and provide feedback. Beta versions are not generally released and may only be used for limited, temporary purposes (~~—Beta Software~~). The Beta Software may not be used in a production environment. Beta Software is unsupported and may contain bugs, errors, and other issues. You accept Beta Software ~~—ASS,~~ without warranty of any kind, and Cisco is not responsible for any problems or issues related to Your use. You understand that the Beta Software may never be generally available and we may discontinue it in our sole discretion at any time for any reason and delete any Customer Data or other data without liability to You. Your Use of the Beta Software is valid for thirty (30) days from the date it is made available to You. You will be invoiced for the list price if You do not return or stop Using it. You may not publish any results of benchmark tests run on the Beta Software without first obtaining written approval from Cisco.
 - ii. We may also give You trial access to generally-available Software. Any trial period will expire in thirty (30) days unless otherwise stated in writing from Cisco. Trials are also provided ~~—ASS~~ without support or any express or implied warranty or indemnity of any kind. At any time during or at the end of the trial, Cisco may terminate the trial and deactivate or delete Your account and any related data, information, and files, and bar any further access to such data, information and files for any reason.

Section 2. Fees and Payment

Fees for the Software are set out in Your purchase terms with Your Approved Source. Fees are non-refundable and payment obligations are non-cancelable, except as provided here, in Your purchase terms, or where prohibited by law.

Section 3. Ownership and Your Data

- a. What We Own.** Cisco and its licensors retain ownership of all intellectual property rights in and to the Software and its underlying technology and associated Documentation (together, —~~Materials~~”), including all improvements, enhancements, modifications, and derivative works. Cisco reserves all rights to the Materials that are not expressly granted under this Agreement or the Supplemental Terms.
- b. What You Own and What You Do with It.** You retain all right, title and interest in and to Customer Data. You authorize Cisco to use any feedback or ideas You provide in connection with Your Use of the Software for any purpose. You represent that all account information You provide is accurate and will be kept up-to-date and that You will use reasonable means to protect Your account from any unauthorized use or access, and promptly notify Cisco of any such use or access.
- c. How We Use Your Data.** Cisco will process Customer Data and Personal Data in accordance with this Agreement, Cisco’s Privacy Statement, and the applicable Supplemental Terms. Cisco will maintain administrative, physical and technical safeguards consistent with industry standards and the Documentation, which are designed to provide security, confidentiality and integrity of the Customer Data we process. Certain Data that Cisco collects from the Software, or that You provide or make accessible to Cisco as part of Your use of the Software, is necessary for the essential use and functionality of such Software. Data is also used by Cisco to provide associated services such as technical support and to continually improve the operation, security and functionality of the Software. For those reasons, You may not be able to opt out from some of the Data collection other than by uninstalling, disabling or ceasing use of the Software.
 - i. Use of Telemetry Data and Statistical Data.** Cisco may process Telemetry Data related to Your use of the Software in order to (i) deliver, enhance, improve, customize, support, and/or analyze the Software and other Cisco offerings, and (ii) derive Statistical Data. Cisco may freely use Telemetry Data that does not identify You or any of Your Authorized Users. Statistical Data is owned by Cisco and may be used for any legitimate interest or purpose, including, without limitation, for purposes of enhancing, developing, marketing, and/or promoting Cisco products and services, including the Software.
 - ii. International Data Transfers.** Cisco may process and store Customer Data and Personal Data in the United States or outside of the country where it was collected. You are responsible for providing any required notices to Authorized Users and obtaining all required consents from Authorized Users regarding the processing and transfer of their Personal Data by the Software, including international transfers. Cisco will only transfer Personal Data consistent with applicable law. If Cisco processes Personal Data from the EEA or Switzerland on Your behalf, we will do so in a manner consistent with the relevant EU- or Swiss-US Privacy Shield Principles (—~~Principles~~”) (see www.commerce.gov/privacyshield) or successor frameworks. If Cisco transfers Personal Data from an APEC Member Economy on Your behalf, Cisco will process such Personal Data in a manner consistent with the APEC Cross Border Privacy Rules Systems requirements (—~~CBPR~~”) (see www.cbprs.org) to the extent the requirements are applicable to Cisco’s processing of such data. If Cisco is unable to provide at least the same level of protection as required by the Principles or CBPRs, Cisco will promptly notify You and cease processing.

Section 4. Software Support

We will provide basic technical support for subscription Cloud and Embedded Software, as described in the Supplemental Terms. Higher levels of support for subscription Software, and support for perpetual Software is separately available for purchase.

Section 5. Term and Termination

- a.** Your right to Use the Software begins on the date (i) the on-premise Embedded Software is made available for download or installation, or (ii) You receive notice that the cloud hosted Cloud Software is provisioned or available for Your use , and continues until the end of the term specified in the Order or Entitlement, unless otherwise terminated in accordance with this Agreement (—~~Initial Term~~”).

If the Software is licensed for use both on-premise and cloud-hosted, Your right to Use begins on the earlier of the date the Software is made available for download or is ready for provisioning.

- b. Software subscriptions will automatically renew for the renewal period selected on the Order (“Renewal Term”) unless (i) either party notifies the other (including via the Approved Source) in writing at least thirty (30) days before the end of the then-current term of its intention not to renew or (ii) You or Your Approved Source elect on the Order at the time of initial purchase not to auto-renew the Software subscriptions. Your Approved Source will notify You reasonably in advance of any Renewal Term if there are fee changes. The new fees will apply for the upcoming Renewal Term unless You or Your Approved Source promptly notify us in writing, before the applicable renewal date, that You do not accept the fee changes. In such event, the Software subscription will terminate at the end of the Initial Term.**
- c.** If a party materially breaches this Agreement and does not cure that breach within thirty (30) days after receipt of written notice of the breach, the non-breaching party may terminate this Agreement for cause. Cisco also has the right to immediately suspend or terminate Your use of the Software if You breach Section 1.c or Section 1.a or 1.b above. Upon termination or expiration of this Agreement, You must cease any further use of the Software and destroy any copies within Your control. Upon any termination by You for Cisco’s material breach of the Agreement, we will refund to You or Your Approved Source any prepaid fees covering the remainder of the Term after the effective date of termination. Upon any termination by Cisco for Your material breach of the Agreement, You will pay Cisco or Your Approved Source any unpaid fees covering the remainder of the Term.
- d.** Cisco reserves the right to end the life (“EOL”) of the Software by providing prior written notice by posting at <http://www.cisco.com/c/en/us/products/index.html>. If You or Your Approved Source prepaid a license fee for Your Use of EOL Cloud Software, Cisco will use commercially reasonable efforts to transition You to a substantially similar Cloud Software. If Cisco does not have a substantially similar Cloud Service, then Cisco will credit You any unused portion of the prepaid fee for such Cloud Service, calculated from the last date the Cloud Service is available. Such credit can be applied towards the future purchase of Cisco products.

Section 6. General Provisions

- a. Audit.** During the license term for the Software and for a period of three (3) years after its expiration or termination, you will take reasonable steps to maintain complete and accurate records of Your use of the Software sufficient to verify compliance with this Agreement. No more than once per twelve (12) month period, You will allow Cisco and its auditors the right to examine such records and any applicable books, systems (including Cisco product(s) or other equipment), and accounts, upon reasonable advanced notice, during Your normal business hours. If the audit discloses underpayment of license fees, You or Your Approved Source will pay such license fees plus the reasonable cost of the audit within thirty (30) days of receipt of written notice.
- b. Survival.** Sections 1.b, 3, 5, 6.a, 6.b, 6.d, 6.g shall survive termination or expiration of this Agreement.
- c. Subcontracting.** We may also subcontract any performance associated with the Software to third parties. Any such subcontract will not relieve Cisco of any of its obligations under this Agreement.
US Government End Users. The Software and Documentation are "commercial items," as defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and Defense Federal Acquisition Regulation Supplement (—DFAR) 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, Government end users will acquire the Software and Documentation with only those rights set forth in this Agreement. Any license provisions that are inconsistent with federal procurement regulations are not enforceable against the U.S. Government.
- d. Modifications.** As our business evolves, we may change this Agreement or any of its components (except an Order). Changes to the Agreement will only apply to future Orders.

- e. **Compliance with Law.** You will comply with all applicable laws and regulations related to Your receipt and use of the Software. You must ensure You have the right to use all features of the Software in Your jurisdiction. Cisco will comply with all applicable laws in the provision of the Software to You. We may restrict the availability of the Software in any particular location or modify or discontinue features to comply with applicable laws and regulations. Cisco may also share information as necessary to comply with laws and subject to Cisco's policy on law enforcement requests found at <http://www.cisco.com/c/en/us/about/trust-transparency-center/validation/report.html>.
- f. **Integration.** If any portion of this Agreement is not enforceable, it will not affect any other terms. Except as expressly stated in a signed agreement, this Agreement, together with any Supplemental Terms is the complete agreement between the parties with respect to the Software and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral) regarding this subject matter. In the event of any conflict, the order of precedence is: i) Supplemental Terms; ii) this Agreement; then iii) any applicable policies referenced in this Agreement. The parties agree that the English version of the Agreement will govern in the event of a conflict between it and any version translated into another language.

Definitions

“Administrative Data” means data related to Your employees or representatives to administer or manage Your use of the Software. Administrative Data may include Personal Data and information about our contractual commitments, whether collected at the time of the initial registration or thereafter.

“Approved Source” means Cisco or a Cisco authorized reseller, distributor or systems integrator, including a Fulfillment Partner under the NASPO ValuePoint Master Agreement Terms and Conditions.

~~**“Authorized User”**~~ means the individuals authorized by You to access the Software.

“Cisco” “we,” “our” or “us” means Cisco Systems, Inc. or its applicable affiliate, the Contractor under the NASPO ValuePoint Master Agreement Terms and Conditions.

“Cisco Content” means any Cisco-provided content or data including, but not limited to, geographic and domain information, rules, signatures, threat intelligence or other threat data feeds, suspicious URLs and IP address data feeds.

~~**“Cloud Software”**~~ means a Cisco-hosted software offering as described in the applicable Cloud Offering Description purchased by You.

~~**“Confidential Information”**~~ means non-public confidential or proprietary information of the disclosing party that is clearly marked confidential or should be reasonably assumed as confidential given the nature of the information and the circumstances of disclosure.

“Customer Data” means Purchasing Entity Data in the NASPO ValuePoint Master Agreement Terms and Conditions.

“Data” means Telemetry Data and Statistical Data.

~~**“Documentation”**~~ means the Cisco user or technical manuals, training materials, specifications, privacy data sheets, or other information applicable to the Software.

~~**“Entitlement”**~~ means the license detail, including license metric, duration, and quantity provided in a product ID (PID) published on Cisco's price list, claim certificate or right to use notification.

“Force Majeure Event” means an event beyond the affected party's reasonable control, including accidents, severe weather events, acts of God, actions of any government agency, epidemic, pandemic, acts of terrorism, or the stability or availability of the Internet or a portion thereof.

“Cloud Offer Description(s)” means the additional terms and conditions applicable to the specific cloud-hosted Software licensed under this Agreement (located [here](#)).

~~**“Order”**~~ means an ordering document (including a web or other electronic form) that specifies the duration, type/product ID (PID) and quantity of Software to be provided and the associated fees.

“Personal Data” has the same meaning in the NASPO ValuePoint Master Agreement Terms and Conditions.

“SEULA” means the Supplemental End User License Agreement containing additional terms and conditions for the on-premise Software licensed under this Agreement (located here).

Software means the binary image of Cisco computer programs (including Upgrades) which could be a downloadable file, delivered on physical media, pre-installed on the on-premise computer system, resident in ROM/Flash (system memory) or cloud-hosted purchased from an Approved Source. Software may be either Embedded Software or Cloud Software.

“Statistical Data” means any information/data that Cisco derives from Customer Data and/or Telemetry Data, provided that such information/data is aggregated and/or de-identified such that it cannot reasonably be used to identify an individual or entity.

“Telemetry Data” means information generated by instrumentation and logging systems created through the use and operation of Cisco products and services.

Upgrades means all updates, upgrades, bug fixes, error corrections, enhancements and other modifications to the Software.

Use or **Using** means to download, install, activate, access or otherwise use the Software

You or **Your** means the Purchasing Entity purchasing the Software pursuant to the NASPO ValuePoint Master Agreement Terms and Conditions and applicable Participating Addendum.

Exhibit 2 -Additional Contractor Terms and Conditions

Services Exhibit

This Services Exhibit governs all Orders for Services placed under the NASPO Master Agreement Terms and Conditions ("NASPO Master Agreement"). This Services Exhibit consists of the terms set forth in Exhibit 2 (including its attachments) and the Service Description Purchasing Entity may elect to purchase.

1. DEFINITIONS

Terms not defined in the body of the NASPO Master Agreement are those set out in the Glossary of Terms at the end of this Exhibit 2.

2. SCOPE

This Exhibit describes the terms and conditions for (a) Direct Purchases from Cisco by Customer of Services, and (b) delivery by Cisco of the Services according to the options ordered by Customer or otherwise provided by Cisco to Customer. Cisco will provide Services for Products and Customer will be entitled to receive Services for which (i) the applicable Services fees have been paid, (ii) a valid Software license has been granted and (iii) Customer provides information requested by Cisco such as valid serial numbers, site location, contract number, and Product type.

3. PRICING

For direct purchases from Cisco, and subsequent Equipment List renewals, prices for Services shall be those specified in Cisco's then-current Price List less any applicable contract discount in effect under the NASPO Master Agreement at the time of acceptance of the Purchase Order by Cisco, or (b) those set forth in a written price quotation submitted by Cisco or its Fulfillment Partner, if at or below the stated contract discount. All stated prices are exclusive of taxes, fees, and duties or other amounts in accordance with the NASPO Master Agreement. Any taxes related to Services purchased pursuant to this Agreement shall be paid by Customer or Customer shall present an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible. In the event that Customer is unable to provide valid and applicable serial number(s) for Product and Cisco agrees to provide Services, then Service fees payable by Customer shall be at Cisco's then-current time and materials or non-contract service rates. Subject to the price discount floor established by Cisco under the NASPO Master Agreement, for indirect purchases, Fulfillment Partners are free to determine their resale prices unilaterally.

Customer understands that no employee or representative of Cisco or anyone else has any authority to determine such resale prices, or to limit the Fulfillment Partners' pricing discretion with respect to Services

In the event that Customer is unable to provide valid and applicable serial number(s) for Product and Cisco agrees to provide Services, then Service fees payable by Customer shall be at Cisco's then-current time and materials or non contract service rates.

4. INVOICING

Fees for Services, other than those for which a SOW is required, shall be invoiced in advance of delivery of Services. The timing of invoices for Services provided pursuant to a SOW shall be set forth in the respective SOW.

5. TERM AND TERMINATION

- a. The term of an Equipment List shall commence on the date set forth on such Equipment List, which may be up to sixty (60) days following the date of Purchase Order acceptance. The term of an Equipment List shall be for a period of one year and shall be renewed automatically for

successive one year terms, unless either party notifies the other of its intent to terminate at least sixty (60) days prior to the expiration of the then current one year term.

- b. The term of each SOW shall be stated in the SOW.
- c. Any Equipment List or SOW may be terminated if Services fees are not paid when due and payment has not been received within thirty (30) days after notice from Cisco of such past due payment, or otherwise in accordance with the termination provisions set out in the Agreement.
- d. Cisco reserves the right to make changes to the scope and content of the Services or part thereof, including terminating the availability of a given Service, at any time upon thirty (30) days' prior notice. Such changes will become effective upon renewal of the affected Equipment Lists and SOWs. If Customer does not agree to a change of scope or content, Customer may terminate any affected Equipment List or SOW by notifying Cisco at least sixty (60) days prior to the expiration of the then current one year term of the Equipment List or SOW. In such case, Cisco shall continue to provide Services until the next expiration date of the affected Equipment List or SOW.
- e. Upon termination of any Equipment List, or SOWs, Customer shall pay Cisco for all work performed under the affected Equipment Lists or SOWs up to the effective date of termination at the agreed-upon prices, fees, and expense reimbursement rates.
- f. Firm Orders for Services under this Services Exhibit placed and accepted prior to expiration of the contract term, (even if involving a multi-year commitment) remain valid in accordance with the contract terms which shall remain binding as to such prior orders only for the term stated therein, and shall not otherwise constitute an extension of the NASPO Master Agreement and this Services Exhibit for any other Services.

6. [INTENTIONALLY LEFT BLANK]

7. LICENSES

- a. Subject to Customer's compliance with the terms of this Services Exhibit, any applicable AS Service Description or SOW, and the End User License Agreement (**EULA**) set forth in Exhibit 1, Cisco grants to Customer a worldwide, non-exclusive and non-transferable license to use for Customer's internal business use only: (i) Software provided as a result of Services, if any, solely in object code form; (ii) other Deliverables specified in an applicable AS Service Description or SOW, if any, and (iii) Data Collection Tools, if any (collectively and individually, the **-Licensed Materials**"). In addition, Cisco grants to Customer a right to modify and create derivative works of any Scripts provided by Cisco to Customer pursuant to this Services Exhibit, solely for Customer's internal business use. These license grants do not include the right to sublicense; provided that Customer may permit its suppliers, subcontractors and other related third parties to use the Licensed Materials solely on Customer's behalf for Customer's benefit, provided that Customer ensures that any such use is subject to license restrictions and confidentiality obligations at least as protective of Cisco's rights in such Licensed Materials as are specified in this Agreement.
- b. Nothing in this Agreement, any AS Service Description or any SOW shall alter or affect the Intellectual Property rights and/or licenses provided with any Cisco Products.
- c. Customer hereby grants to Cisco a perpetual, irrevocable, royalty free, worldwide right and license to all Intellectual Property in the Customer Feedback (as defined below) to use and incorporate Customer Feedback into any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology, and to use, make, have made, offer to sell, sell, copy, distribute and create derivative works of such Customer Feedback for any and all purposes whatsoever, and Customer acknowledges and agrees that it will obtain no rights in or to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology as a result of Cisco's use of any such Customer Feedback. For purposes of this Agreement, **-Customer Feedback**" means all oral or written communications regarding improvements or changes to any Services, Products, Deliverables, Data Collection Tools, Reports, Scripts or Cisco Pre-Existing Technology that Customer provides to Cisco.

8. OWNERSHIP

- a. Each party will retain the exclusive ownership of all its pre-existing Intellectual Property, Confidential Information and materials, including, without limitation, proprietary ideas, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology that are owned by a party prior to commencement of any Services hereunder, or that are otherwise developed by or for such party outside the scope of this Agreement (**-Pre-Existing Technology**).
- b. Except as otherwise expressly set forth in applicable SOW, Cisco owns and will continue to own all right, title and interest in and to the Services, Products, Deliverables, Data Collection Tools, Reports, Scripts, sketches, diagrams, text, know-how, concepts, proofs of concepts, artwork, software, algorithms, methods, processes, identifier codes or other technology provided or developed by Cisco (or a third party acting on Cisco's behalf) pursuant to this Agreement, including modifications, enhancements, improvements or derivative works of any of the foregoing, regardless of who first conceives or reduces to practice, and all Intellectual Property in any of the foregoing (collectively, **-Cisco Intellectual Property**).
- c. As between Customer and Cisco, Customer shall at all times retain all right, title and interest in and to all of Customer's Pre-Existing Technology and all Intellectual Property that is developed by Customer or by a third party on Customer's behalf thereafter, other than Cisco Intellectual Property. Third Party Products shall at all times be owned by the applicable third party, and will be subject to any applicable third party license terms.

9. SUBCONTRACTING

Cisco reserves the right to subcontract Services to a third-party organization to provide Services to Customer. Any such subcontract shall not relieve Cisco of any of its obligations under this Services Exhibit or the NASPO Master Agreement.

EXHIBIT 2 -- ATTACHMENT 1

GLOSSARY OF TERMS

Additional Services means installation of new Hardware, system additions, Hardware upgrades, dispatch of a field engineer, or non-mandatory engineering changes.

Advance Replacement means shipment of replacement Field-Replaceable Unit (FRU) before receiving failed or defective FRU.

Advanced Services means the Services set forth in the AS Service Description(s) found at <http://www.cisco.com/go/servicedescriptions> and/or SOW(s) selected by the Customer. Advanced Services does not include Cisco's core maintenance services, such as Smart Net Total Care or Software Application Services, nor does it apply to the purchase, support or maintenance of any Products.

Advanced Services Engineer means the Cisco engineer appointed to be the main point of contact for a Customer purchasing Advanced Services.

Application Software means non-resident or standalone Software Products listed on the Price List that include but are not limited to Cisco Systems® Network management Software, security Software, IP telephony Software, Internet appliance Software, Cisco® Intelligent Contact Management Software, IP Contact Center Software, and Cisco Customer Interaction Suite Software.

AS Service Descriptions mean the description of the Advanced Services available from Cisco, which are available at <http://www.cisco.com/go/servicedescriptions> and which are incorporated in this Agreement by reference.

Authorized Channel means a system integrator, distributor or reseller authorized by Cisco to sell Services.

Business Days means the generally accepted days of operation per week within the relevant region where the Services shall be performed, excluding local holidays as observed by Cisco.

Cisco means Contractor under the NASPO Master Agreement.

Customer means Purchasing Entity under the NASPO Master Agreement.

Data Collection Tools means Hardware and/or Software tools that support Cisco's ability to provide troubleshooting on cases, data analysis, and report generation capabilities as part of the Advanced Services.

Depot Time or **Local Time** means Central European Time for Services provided in Europe-Middle-East and Africa, Australia's Eastern Standard Time for Services provided in Australia, Japan's Standard Time for Services provided in Japan, and Pacific Standard Time for Services provided in all other locations.

Deliverable(s) means, with respect to each AS Service Description and/or SOW, the items to be delivered by Cisco to Customer as set forth in an applicable AS Service Description and/or SOW, including, without limitation, any Software, Reports, Data Collection Tools, and/or Scripts.

Device Type means a Cisco supported Hardware Product (for example, Cisco Catalyst® 6509 Switch, GSR 12000 and Cisco 7200 Series Router).

Direct Purchases means purchases of Services by Customer directly from Cisco.

Equipment List means the list of Hardware and/or Software for which Cisco provides services.

Event means notification by Customer of its performance of a planned Network Hardware, Software, or configuration change.

Feature Set Upgrade means a separately licensed and priced Software release that contains an enhanced configuration or feature set.

Field-Replaceable Unit (FRU) means any component or subassembly of an item or unit of Hardware that reasonably can be replaced at Customer's location. FRUs also may be subject to size and weight limitations.

Four-hour Response means:

- (i) For Advance Replacement Service, the four-hour time period commences upon the Cisco problem diagnosis and determination that a FRU is required and ends when the FRU is delivered onsite.
- (ii) For onsite service, the four-hour time period commences upon the Cisco problem diagnosis and determination that remedial onsite service is required and ends when Cisco personnel arrive onsite.

Indirect Purchases means purchases of Services by Customer through an Authorized Channel.

Intellectual Property means any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

Level 1 means support that is defined as having the necessary technical staff (Cisco or Cisco-authorized reseller) with appropriate skill, perform installations, Remedial Hardware Maintenance, and basic Hardware and Software configuration on Cisco Products.

Level 2 means support that is defined as having the necessary technical staff with the appropriate skills to perform isolation, replication and diagnosis of internet-based problems on Cisco Product(s). Customer shall not report Software bugs to Cisco prior to attempting to identify the source of such bugs and testing in Customer's Network where appropriate. If the Customer cannot duplicate the bug in Customer's Network, Customer and Cisco shall cooperate in attempting to replicate and resolve related Software bugs in either Customer's or Cisco's test facility as mutually agreed. In all cases Customer will address Software bugs on a best effort basis to replicate same in Customer's Network and document activity to Cisco before seeking further resolution with Cisco's participation.

Local Time means local time on Business Days.

Maintenance Release means an incremental Software release that provides maintenance fixes and may provide additional Software functions. Cisco designates Maintenance Releases as a change in the digits to the right of the tenths digit or of the hundredths digit of the Software version number [x.x.(x) or x.x.x.(x)].

Major Release means a release of Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Software version number [(x).x.x].

Minor Release means an incremental release of Software that provides maintenance fixes and additional Software functions. Cisco designates Minor releases as a change in the tenths digit of the Software version number [x.(x).x].

Network means a set of interconnected and interworking Cisco supported Hardware and Software that is implemented, operated, and supported by Customer from a single network operations center (NOC).

Network Infrastructure means your core transport and aggregation Network technology (for example, metro optical, ATM/Frame Relay, IP core and Cisco security devices including, but not limited to, Firewall, IDS and VPN3000).

Network Infrastructure Size means the total value of Products in Customer's Network based on the global list price of the Products that Customer has purchased.

Remedial Hardware Maintenance means diagnosis and onsite replacement of Hardware components with FRUs.

Reports means reports, recommendations, network configuration diagrams, and related non-Software Deliverables provided by Cisco to Customer pursuant to this Agreement.

Scripts means software scripts, macros and batch files provided by Cisco to Customer pursuant to this Agreement.

Services means one or more of the services options selected by the Customer in its Purchase Order and described at: <http://www.cisco.com/go/servicedescriptions>

Services Descriptions mean the detailed descriptions of the Services purchased by Customer which are incorporated into this Services Exhibit by reference.

Standard Business Hours means (i) 8:00 AM to 5:00 PM, Depot time, on Business Days for replacement of failed Products and (ii) 8:00 AM to 5:00 PM, Local Time at location of the respective Cisco TAC, on Business Days for case handling of TAC calls.

TAC means the Cisco Technical Assistance Center.

Technical Support Services means Services that provide both essential proactive and reactive operation and maintenance support Services identified as Technical Support Services at <http://www.cisco.com/go/servicedescriptions>.

Technology Application means specific technologies including, but not limited to, content networking, broadband, and IP telephony that do not operate at the Network Infrastructure level.

Third Party Products means third party hardware and/or software, and all upgrades/updates thereto, that are designated by Cisco as required for:

- (i) The operation of Application Software in conformance with Cisco applicable Application Software Documentation; and
- (ii) Cisco support of the Application Software.

Transactional Advanced Services means the project related or consultancy Services sold under a Statement of Work.

Two-hour Response means:

- (i) For Advance Replacement, the two-hour time period commencing with Cisco's problem diagnosis and determination that a FRU is required and ending when the FRU is delivered onsite.
- (ii) For onsite service, the two-hour time period commencing with our problem diagnosis and determination that remedial onsite service is required and ending when Cisco personnel arrive onsite.

Update means Cisco Software Maintenance Releases, Minor Releases and Major Releases containing the same configuration or feature set as originally acquired, unless the Customer has upgraded the applicable Hardware or Software to a configuration or feature set other than what was originally acquired, and the applicable license fee for that upgrade has been paid. Updates do not include Feature Set Upgrades.

EXHIBIT 2 -- ATTACHMENT 2

CISCO SEVERITY AND ESCALATION GUIDELINES

Customer shall assign a severity to all problems submitted to Cisco.

Severity 1 means an existing Network is down or there is a critical impact to Customer's business operation. Customer and Cisco both will commit full-time resources to resolve the situation.

Severity 2 means operation of an existing Network is severely degraded or significant aspects of Customer's business operation are negatively impacted by unacceptable Network performance. Customer and Cisco both will commit full-time resources during Standard Business Hours to resolve the situation.

Severity 3 means operational performance of the Network is impaired, although most business operations remain functional. Customer and Cisco both are willing to commit resources during Standard Business Hours to restore service to satisfactory levels.

Severity 4 means information is required on Application Software capabilities, installation, or configuration. There is little or no impact to Customer's business operation. Customer and Cisco both are willing to provide resources during Standard Business Hours to provide information or assistance as requested.

If you do not believe that adequate progress is being made or that the quality of Cisco service is satisfactory, we encourage you to escalate the problem to the appropriate level of management by asking for the TAC duty manager.

Cisco Escalation Guideline

<i>Elapsed Time*</i>	<i>Severity 1</i>	<i>Severity 2</i>	<i>Severity 3</i>	<i>Severity 4</i>
1 hour	Customer Engineering Manager			
4 hours	Technical Support Director	Customer Engineering Manager		
24 hours	Vice President, Customer Advocacy	Technical Support Director		
48 hours	President/CEO	Vice President, Customer Advocacy		
72 hours			Customer Engineering Manager	
96 hours		President/CEO	Technical Support Director	Customer Engineering Manager

*Severity 1 escalation times are measured in calendar hours—24 hours per day, 7 days per week. Severity 2, 3, and 4 escalation times correspond with Standard Business Hours.

EXHIBIT 2 -- ATTACHMENT 3

SERVICES NOT COVERED

Services that are not expressly set forth in the applicable Service Description or Statement of Work document are not covered under such Service Description or Statement of Work, including, without limitation, the following:

1. Services are only provided for generally available Products and Software releases/versions, unless agreed otherwise.
2. Any customization of, or labor to install, Software and Hardware (including installation of Updates).
3. Furnishing of supplies, accessories or the replacement of expendable parts (e.g., cables, blower assemblies, power cords, and rack mounting kits).
4. Electrical or site work external to the Products.
5. Any expenses incurred to visit End User's location, except as required during escalation of problems by Cisco.
6. Service for Hardware that is installed outdoors or that is installed indoors but requires special equipment to perform such Service.
7. Hardware replacement in quantities greater than three (3) FRUs, including those replacements due to pervasive issues documented in an engineering change notice or field alert unless End User has troubleshoot failed Hardware down to the FRU level.
8. Services performed at domestic residences.
9. Support or replacement of Product that is altered, modified, mishandled, destroyed or damaged by one or more of the following: (a) natural causes; (b) environmental failures; (c) your failure to take any required actions; (d) a negligent or willful act or omission by you or use by you other than as specified in the applicable Cisco-supplied documentation; or (e) an act or omission of a third party.
10. Services or software to resolve Software or Hardware problems resulting from third party product or causes beyond Cisco's control or failure to perform your responsibilities set out in this document.
11. Services for non-Cisco Software installed on any Cisco Product.
12. Any Hardware or third party product upgrade required to run new or updated Software.
13. Erasure or other removal of any customer or third party data on Products (or parts thereof) returned, repaired or otherwise handled by Cisco.
14. Additional Services are provided at the then-current time and materials rates.
15. Except as otherwise agreed, Software entitlement, including media, documentation, binary code, source code or access in electronic or other form is not provided. In addition, except as otherwise provided, no right, use or license to our Software is granted and you acknowledge and agree that you obtain no such rights.
16. Application Software is not supported as part of the SMARTnet support services provided by Cisco and is only supported under a separate service description.

The non-entitlement policies posted at <http://www.cisco.com/go/warranty> are hereby incorporated into this Agreement by this reference.

Capitalized terms are defined in the Glossary of Terms, or may be as set forth in the applicable Service Description or Statement of Work.

Attachment B – Scope of Services Awarded to Contractor

I. Data Communications Award Categories

The scope for this contract is as provided below. Contractor may offer products (i.e. white box, artificial intelligence, etc.) and services within the Categories it received an award in. Each category also allows for Internet of Things (IoT) products. These products must be an IoT product that can be deployed within, upon, or integrated into a government agency's physical asset to address government line of business needs. Proposals are expected to include IoT products designed to support common government lines of business in specific subcategories i.e. routers, switches, end points, etc. IoT products can only be provided in categories that the vendor is awarded in and can include endpoints that support items in that category.

Category 1.1: UNIFIED COMMUNICATIONS (UC).

A set of products that provides a consistent unified user interface and user experience across multiple devices and modes of communications. Unified Communications that is able to provide services such as session management, voice, video, messaging, mobility, and meeting solutions (i.e., web, audio, IM&P, file sharing, white boarding, guest support, etc.). It can provide the foundation for advanced unified communications capabilities of IM and presence-based services and extends telephony features and capabilities to packet telephony network devices such as IP phones, media processing devices, Voice over IP (VoIP) gateways, and multimedia applications. Additional services, such as unified messaging, multimedia conferencing, collaborative contact centers, and interactive multimedia response systems, are made possible through open telephony APIs. General UC solution capabilities should include:

- High Availability for Call Processing
- Hardware Platform High Availability
- Network Connectivity High Availability
- PSTN Access resiliency
- Call Processing Redundancy
- Optional Branch Office Survivability Services

1.1.1 IP Telephony — Solutions utilized to provide the delivery of the telephony application (for example, call setup and teardown, and telephony features) over IP, instead of using circuit-switched or other modalities. Capabilities should include:

- Support for analog, digital, and IP endpoints
- Centralized Management
- Enterprise Telephony Features (CFx, Transfer, CID, Shared line appearance, One Number Service, etc.)
- Provide basic hunt group and call queuing capabilities
- Flexibility to configure queue depth and hold time, play unique announcements and Music on Hold (MoH), log in and log out users from a queue and basic queue statistics (from the phone
- E911 Support
 - National E911 Routing Services (proper PSAP routing when PSTN access is centralized)
 - 911 Device Tracking Services
 - 911 On-Site Notification Services

1.1.2 Instant messaging/ Presence — Solutions that allow communication over the Internet Protocol, within the enterprise, and remotely, as well as with guest users that offers quick transmission of text-based messages from sender to receiver. In push mode between two or more people using personal computers, Desktop (Windows/Mac/VDI/Linux), Mobile/Smartphone, Tablet, along with shared clients, instant messaging basically offers real-time direct written language-based online chat. Instant messaging may also provide video calling, file sharing, PC-to-PC voice calling and PC-to-regular-phone calling.

- IM Persistency / Workstream Collab
- File Sharing Services, Desktop Sharing Services

1.1.3 Unified messaging — Integration of different electronic messaging and communications media (e-mail, SMS, Fax, voicemail, video messaging, etc.) technologies into a single interface, accessible from a variety of different devices.

- Ability to access and manage voice messages in a variety of ways, using email inbox, Web browser, desktop client, VoIP phone, or mobile phone
- Visual Voicemail Support (Optional)
- ASR / Transcription Services for recorded messages

1.1.4 Contact Center — A computer-based system that provides call and contact routing for high-volume telephony transactions, with specialist answering —agent” stations and a sophisticated real-time contact management system. The definition includes all contact center systems that provide inbound contact handling capabilities, outbound call/contact center and automatic contact distribution, combined with a high degree of sophistication in terms of dynamic contact traffic routing management.

1.1.5 Communications End Points and Applications

- Attendant Consoles (Telephone Station)
- IP Phones (desktop devices and accessories)
- Room Based Conferencing Endpoints (Conf Phones, SparkBoard, JamBoard, Surface Hub)

1.1.6 UC Network Monitoring — Provides end-to-end service management for Unified Communications. Capabilities include testing, performance monitoring, configuration management, accounting/billing, analytics (capacity planning), contact center specialized reports (utilization, queue KILs, call abandonment ratios, etc.), and business intelligence reporting.

1.1.7 Collaboration — Voice, video, workstream collaboration, and web conferencing; messaging; mobile applications; and enterprise social software. Doesn't include the audio visual software or hardware.

1.1.8 Collaborative Video — A set of immersive video technologies that enable people to feel or appear as if they were present in a location that they are not physically in. Immersive video consists of a multiple codec video system, where each meeting attendee uses an immersive video room to —id in” and can see/talk to every other member on a screen (or screens) as if they were in the same room and provides call control that enables intelligent video bandwidth management.

1.1.9 Content Delivery Systems (CDS) — A large distributed system of servers deployed in multiple data centers connected by the Internet. The purpose of the content delivery system is to serve content to a very large number of end-users (i.e., quarterly all hands meetings/webinar) with high availability and high performance. CDSs serve content over the Internet, including web objects (text, graphics, URLs, and scripts), downloadable objects (media files, software, documents), applications (e-commerce, portals), live streaming media, on-demand streaming media, and social networks.

Category 1.2: NETWORKING.

1.2.1 Network Application Services.

Application networking solutions and technologies that enable the successful and secure delivery of applications to local, remote, and branch-office users using technology to accelerate, secure, and increase availability of both application traffic and computing resources.

1.2.1.1 Virtualized Load Balancers — Virtual devices that act like a reverse proxy to distribute network and/or application traffic across multiple servers to improve the concurrent user capacity and overall reliability of applications. Capabilities should include:

- SSL (Secure Sockets Layer) Off-loading
- Caching capabilities
- Layer 4 Load Balancing
- Layer 7 Load Balancing
- Detailed Reporting
- Supports multiple load balancers in the same system for multiple groups
- Supports TLS1.2

1.2.1.2 WAN Optimization — An appliance utilizing a collection of techniques for increasing data-transfer efficiencies across wide-area networks (WAN). Capabilities should include:

- CIFS (Common Internet File System) acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization
- Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages)

1.2.2 Networking Software.

Software that runs on a server, or within the Cloud, and enables the server to manage data, users, groups, security, applications, and other networking functions. The network operating system is designed to allow transfer of data among multiple computers in a network, typically a local area network (LAN), a private network or to other networks. Networking software capabilities should include:

- Restartable Process
- High availability options
- Targeted operating systems, i.e. DC, campus, core, wan, etc.
- Operating System Efficiencies
- Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages).

1.2.2.1 Network Management and Automation — Software products and solutions for network automation, cloud computing, and IT systems management.

1.2.2.2 Data Center Management and Automation — Software products and solutions that capture and automate manual tasks across servers, network, applications, and virtualized infrastructure.

1.2.2.3 Cloud Portal and Automation — Software products and solutions for cloud management with policy-based controls for provisioning virtual and physical resources.

1.2.2.4 Branch Office Management and Automation — Software products and solutions for management of branch offices. Capabilities include remote troubleshooting, device management, and WAN performance monitoring.

1.2.3 Network Optimization and Acceleration.

Devices and tools for increasing data-transfer efficiencies across wide-area networks.

1.2.3.1 Data Analytics — Appliance for improving network management by more effectively factoring in issues related to congestion, such as utilization, service consumption and routing. Provides real-time insights into network traffic to determine the value of different portions of that traffic.

1.2.3.2 Dynamic Load Balancing (Network Traffic Management) — An appliance that performs a series of checks and calculations to determine which server can best service each client request in order to select the server that can successfully fulfill the client request and do so in the shortest amount of time without overloading either the server or the server farm as a whole.

1.2.3.3 WAN Acceleration — Appliance that optimizes bandwidth to improve the end user's experience on a wide area network (WAN). Capabilities should include:

- CIFS acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization

1.2.3.4 High Availability and Redundancy — Limits any disruption to network uptime should an appliance face unforeseen performance issues. Transparently redistributes workloads to surviving cluster appliances without impacting communication throughout the cluster.

1.2.4 Optical Networking.

High capacity networks based on optical technology and components that provide routing, grooming, and restoration at the wavelength level as well as wavelength based services.

1.2.4.1 Core DWDM (Dense Wavelength Division Multiplexing) Switches — Switches used in systems designed for long haul and ultra long-haul optical networking applications.

1.2.4.2 Edge Optical Switches — Provide entry points into the enterprise or service provider core networks.

1.2.4.3 Optical Network Management — Provides capabilities to manage the optical network and allows operators to execute end-to-end circuit creation.

1.2.4.4 IP over DWDM (IPoDWDM) — A device utilized to integrate IP Routers and Switches in the OTN (Optical Transport Network).

Category 1.3: ROUTERS, SWITCHES, SECURITY, AND NETWORKING STORAGE.

1.3.1 Routers.

A device that forwards data packets along networks. A router is connected to at least two networks, commonly two LANs or WANs or a LAN and its ISP's network. Routers are located at gateways, the places where two or more networks connect, and are the critical device that keeps data flowing between networks and keep the networks connected to the Internet.

1.3.1.1 Branch Routers — A multiservice router typically used in branch offices or locations with limited numbers of users and supports flexible configurations/feature. For example: security, VoIP, wan acceleration, etc.

1.3.1.2 Network Edge Routers — A specialized router residing at the edge or boundary of a network. This router ensures the connectivity of its network with external networks, a wide area network or the Internet. An edge router uses an External Border Gateway Protocol, which is used extensively over the Internet to provide connectivity with remote networks.

1.3.1.3 Core Routers - High performance, high speed, low latency routers that enable Enterprises to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV and Video on Demand (VoD), and Software as a Service (SaaS).

1.3.1.4 Service Aggregation Routers — Provides multiservice adaptation, aggregation and routing for Ethernet and IP/MPLS networks to enable service providers and enterprise edge networks simultaneously host resource-intensive integrated data, voice and video business and consumer services.

1.3.1.5 Carrier Ethernet Routers — High performance routers that enable service providers to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV, Video on Demand (VoD), and Software as a Service (SaaS).

1.3.2 Security.

1.3.2.1 Data Center and Virtualization Security Products and Appliances — Products designed to protect high-value data and data center resources with threat defense and policy control.

1.3.2.2 Intrusion Detection/Protection and Firewall Appliances — Provide comprehensive inline network firewall security from worms, Trojans, spyware, key loggers, and other malware. This includes Next-Generation Firewalls (NGFW), which offer a wire-speed integrated network platform that performs deep inspection of traffic and blocking of attacks. Intrusion Detection/Protection and Firewall Appliances should provide:

- Non-disruptive in-line bump-in-the-wire configuration
- Standard first-generation firewall capabilities, e.g., network-address translation (NAT), stateful protocol inspection (SPI) and virtual private networking (VPN), etc.
- Application awareness, full stack visibility and granular control
- Capability to incorporate information from outside the firewall, e.g., directory-based policy, blacklists, white lists, etc.
- Upgrade path to include future information feeds and security threats
- SSL decryption to enable identifying undesirable encrypted applications (Optional)

1.3.2.3 Logging Appliances and Analysis Tools — Solutions utilized to collect, classify, analyze, and securely store log messages.

1.3.2.4 Secure Edge and Branch Integrated Security Products — Network security, VPN, and intrusion prevention for branches and the network edge. Products typically consist of appliances or routers.

1.3.2.5 Secure Mobility Products — Delivers secure, scalable access to corporate applications across multiple mobile devices.

1.3.2.6 Encryption Appliances — A network security device that applies crypto services at the network transfer layer - above the data link level, but below the application level.

1.3.2.7 On-premise and Cloud-based services for Network Communications Integrity — Solutions that provide threat protection, data loss prevention, message level encryption, acceptable use and application control capabilities to secure web and email communications. This could include cloud access security brokers (CASBs) and DNS security.

1.3.2.8 Secure Access — Products that provide secure access to the network for any device, including personally owned mobile devices (laptops, tablets, and smart phones). Capabilities should include:

- Management visibility for device access
- Self-service on-boarding

- Centralized policy enforcement
- Differentiated access and services
- Device Management

1.3.3 Storage Networking.

High-speed network of shared storage devices connecting different types of storage devices with data servers.

1.3.3.1 Director Class SAN (Storage Area Network) Switches and Modules — A scalable, high-performance, and protocol-independent designed primarily to fulfill the role of core switch in a core-edge Fibre Channel (FC), FCOE or similar SAN topology. A Fibre Channel director is, by current convention, a switch with at least 128 ports. It does not differ from a switch in core FC protocol functionality. Fibre Channel directors provide the most reliable, scalable, high-performance foundation for private cloud storage and highly virtualized environments.

1.3.3.2 Fabric and Blade Server Switches — A Fibre Channel switch is a network switch compatible with the Fibre Channel (FC) protocol. It allows the creation of a Fibre Channel fabric, which is currently the core component of most SANs. The fabric is a network of Fibre Channel devices, which allows many-to-many communication, device name lookup, security, and redundancy. FC switches implement zoning; a mechanism that disables unwanted traffic between certain fabric nodes.

1.3.3.3 Enterprise and Data Center SAN and VSAN (Virtual Storage Area Network) Management - Management tools to provisions, monitors, troubleshoot, and administers SANs and VSANs.

1.3.3.4 SAN Optimization — Tools to help optimize and secure SAN performance (ie. Encryption of data- at-rest, data migration, capacity optimization, data reduction, etc.

1.3.4: Switches.

Layer 2/3 devices that are used to connect segments of a LAN (local area network) or multiple LANs and to filter and forward packets among them.

1.3.4.1 Campus LAN – Access Switches — Provides initial connectivity for devices to the network and controls user and workgroup access to internetwork resources. The following are some of the features a campus LAN access switch should support:

1. Security
 - a. SSHv2 (Secure Shell Version 2)
 - b. 802.1X (Port Based Network Access Control)
 - c. Port Security
 - d. DHCP (Dynamic Host Configuration Protocol) Snooping
2. VLANs
3. Fast Ethernet/Gigabit Ethernet
4. PoE (Power over Ethernet)
5. link aggregation
6. 10 Gb support
7. Port mirroring
8. Span Taps
9. Support of IPv6 and IPv4
10. Standards-based rapid spanning tree
11. NetFlow Support (Optional).

1.3.4.2 Campus LAN – Core Switches — Campus core switches are generally used for the campus backbone and are responsible for transporting large amounts of traffic both reliably and quickly. Core switches should provide:

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Security
 - SSHv2
 - MacSec encryption
 - Role-Based Access Control Lists (ACL)
- Support of IPv6 and IPv4
- 1/10/40/100 Gbps support
- IGP (Interior Gateway Protocol) routing
- EGP (Exterior Gateway Protocol) routing
- VPLS (Virtual Private LAN Service) Support
- VRRP (Virtual Router Redundancy Protocol) Support
- NetFlow Support.

1.3.4.3 Campus Distribution Switches — Collect the data from all the access layer switches and forward it to the core layer switches. Traffic that is generated at Layer 2 on a switched network needs to be managed, or segmented into Virtual Local Area Networks (VLANs), Distribution layer switches provides the inter-VLAN routing functions so that one VLAN can communicate with another on the network. Distribution layer switches provides advanced security policies that can be applied to network traffic using Access Control Lists (ACLs).

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Security (SSHv2 and/or 802.1X)
- Support of IPv6 and IPv4
- Jumbo Frames Support
- Dynamic Trunking Protocol (DTP)
- Per-VLAN Rapid Spanning Tree (PVRST+)
- Switch-port auto recovery
- NetFlow Support or equivalent

1.3.4.4 Data Center Switches — Data center switches, or Layer 2/3 switches, switch all packets in the data center by switching or routing good ones to their final destinations, and discard unwanted traffic using Access Control Lists (ACLs) a minimum of 10 Gigabit speeds. High availability and modularity differentiates a typical Layer 2/3 switch from a data center switch. Capabilities should include:

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Ultra-low latency through wire-speed ports with nanosecond port-to-port latency and hardware-based Inter-Switch Link (ISL) trunking
- Load Balancing across Trunk group able to use packet based load balancing scheme
- Bridging of Fibre Channel SANs and Ethernet fabrics
- Jumbo Frame Support

- Plug and Play Fabric formation that allows a new switch that joins the fabric to automatically become a member
- Ability to remotely disable and enable individual ports
- Support NetFlow or equivalent

1.3.4.5 Software Defined Networks (SDN) — An application in SDN that manages flow control to enable intelligent networking.

1.3.4.6 Software Defined Networks (SDN) - Virtualized Switches and Routers — Technology utilized to support software manipulation of hardware for specific use cases.

1.3.4.7 Software Defined Networks (SDN) — Controllers - is an application in software-defined networking (SDN) that manages flow control to enable intelligent networking. SDN controllers are based on protocols, such as OpenFlow, that allow servers to tell switches where to send packets. The SDN controller lies between network devices at one end and applications at the other end. Any communications between applications and devices have to go through the controller. The controller uses multiple routing protocols including OpenFlow to configure network devices and choose the optimal network path for application traffic.

1.3.4.8 Carrier Aggregation Switches — Carrier aggregation switches route traffic in addition to bridging (transmitted) Layer 2/Ethernet traffic. Carrier aggregation switches' major characteristics are:

- Designed for Metro Ethernet networks
- Designed for video and other high bandwidth applications
- Supports a variety of interface types, especially those commonly used by Service Providers

Capabilities should include:

- Redundant Processors
- Redundant Power
- IPv4 and IPv6 unicast and multicast
- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- MPLS (Multiprotocol Label Switching)
- BGP (Border Gateway Protocol)
- Software router virtualization and/or multiple routing tables
- Policy based routing
- Layer 2 functionality
 - Per VLAN Spanning Tree
 - Rapid Spanning Tree
 - VLAN IDs up to 4096
 - Layer 2 Class of Service (IEEE 802.1p)
 - Link Aggregation Control Protocol (LACP)
 - QinQ (IEEE 802.1ad)

1.3.4.9 Carrier Ethernet Access Switches — A carrier Ethernet access switch can connect directly to the customer or be utilized as a network interface on the service side to provide layer 2 services.

- Hot-swappable and field-replaceable integrated power supply and fan tray
- AC or DC power supply with minimum DC input ranging from 18V to 32 VDC and 36V to 72 VDC
- Ethernet and console port for manageability

- SD flash card slot for additional external storage
- Stratum 3 network clock
- Line-rate performance with a minimum of 62-million packets per second (MPPS) forwarding rate
- Support for dying gasp on loss of power
- Support for a variety of small form factor pluggable transceiver (SFP and SFP+) with support for Device Object Model (DOM)
- Timing services for a converged access network to support mobile solutions, including Radio Access Network (RAN) applications
- Support for Synchronous Ethernet (SyncE) services
- Supports Hierarchical Quality of Service (H-QoS) to provide granular traffic-shaping policies
- Supports Resilient Ethernet Protocol REP/G.8032 for rapid layer-two convergence

Category 1.4: WIRELESS.

Provides connectivity to wireless devices within a limited geographic area. System capabilities should include:

- Redundancy and automatic failover
- IPv6 compatibility
- NTP Support

1.4.1 Access Points — A wireless Access Point (AP) is a device that allows wireless devices to connect to a wired network using Wi-Fi, or related standards. Capabilities should include:

- 802.11a/b/g/n
- 802.11n
- 802.11ac
- Capable of controller discovery method via DHCP (onsite controller or offsite through Cloud Architecture)
- UL2043 plenum rated for safe mounting in a variety of indoor environments
- Support AES-CCMP (128-bit)
- Provides real-time wireless intrusion monitoring and detection

1.4.2 Outdoor Wireless Access Points — Outdoor APs are rugged, with a metal cover and a DIN rail or other type of mount. During operations they can tolerate a wide temperature range, high humidity and exposure to water, dust, and oil. Capabilities should include:

- Flexible Deployment Options
- Provides real-time wireless intrusion monitoring and detection
- Capable of controller discovery method via DHCP (onsite controller or offsite through Cloud Architecture)

1.4.3 Wireless LAN Controllers — An onsite or offsite solution utilized to manage Light-weight access points in large quantities by the network administrator or network operations center. The WLAN controller automatically handles the configuration of wireless access-points. Capabilities should include:

- Ability to monitor and mitigate RF interference/self-heal
- Support seamless roaming from AP to AP without requiring re-authentication
- Support configurable access control lists to filter traffic and denying wireless peer to peer traffic
- System encrypts all management layer traffic and passes it through a secure tunnel

- Policy management of users and devices provides ability to de-authorize or deny devices without denying the credentials of the user, nor disrupting other AP traffic
- Support configurable access control lists to filter traffic and denying wireless peer to peer traffic

1.4.4 Wireless LAN Network Services and Management — Enables network administrators to quickly plan, configure and deploy a wireless network, as well as provide additional WLAN services. Some examples include wireless security, asset tracking, and location services. Capabilities should include:

- Provide for redundancy and automatic failover
- Historical trend and real time performance reporting is supported
- Management access to wireless network components is secured
- SNMPv3 enabled
- RFC 1213 compliant
- Automatically discover wireless network components
- Capability to alert for outages and utilization threshold exceptions
- Capability to support Apple's Bonjour Protocol / mDNS
- QoS / Application identification capability

1.4.5 Cloud-based services for Access Points — Cloud-based management of campus-wide WiFi deployments and distributed multi-site networks. Capabilities include:

- Zero-touch access point provisioning
- Network-wide visibility and control
- RF optimization,
- Firmware updates

1.4.6 Mobile Device Management (MDM) — MDM technology utilized to allow employees to bring personally owned mobile devices (laptops, tablets, and smart phones) to their workplace, and use those devices to access privileged government information and applications in a secure manner. Capabilities should include:

- Ability to apply corporate policy to new devices accessing the network resources, whether wired or wireless
- Provide user and devices authentication to the network
- Provide secure remote access capability
- Support 802.1x
- Network optimization for performance, scalability, and user experience

Category 1.5: FACILITY MANAGEMENT, MONITORING, AND CONTROL.

Technology utilized in the management, monitoring and control of facilities. Technologies include:

- a. Access control systems
- b. Detection/Identification systems, such as surveillance systems, closed circuit television cameras, or IP camera networks and the associated monitoring systems.
- c. Response systems such as alert systems, desktop monitoring systems, radios, and digital signage.
- d. Building and energy controls

II. Value Added Services

For each Award Category above, the following valued services should also be available for procurement at the time of product purchase or anytime afterwards. This provided list of value added services is not intended to be exhaustive, and may be updated pursuant to the terms of the resulting Master Agreement

2.1 Maintenance Services — Capability to provide technical support, software maintenance, flexible hardware coverage, and smart, proactive device diagnostics for hardware.

2.2 Professional Services

- a. Deployment Services
 - i. Survey/ Design Services — Includes, but not limited to, discovery, design, architecture review/validation, and readiness assessment.
 - ii. Implementation Services — Includes, but not limited to, basic installation and configuration or end-to-end integration and deployment.
 - iii. Optimization — Includes, but not limited to, assessing operational environment readiness, identify ways to increase efficiencies throughout the network, and optimize Customer's infrastructure, applications and service management.
- b. Remote Management Services — Includes, but not limited to, continuous monitoring, incident management, problem management, change management, and utilization and performance reporting that may be on a subscription basis.
- c. Consulting/Advisory Services — Includes, but not limited to, assessing the availability, reliability, security and performance of Customer's existing solutions.
- d. Data Communications Architectural Design Services — Developing architectural strategies and roadmaps for transforming Customer's existing network architecture and operations management.
- e. Statement of Work (SOW) Services — Customer-specific tasks to be accomplished and/or services to be delivered based on Customer's business and technical requirements.
- f. Testing Services — Includes, but not limited to, testing the availability, reliability, security and performance of Customer's existing solutions

2.3 Fulfillment Partner's Services — Provided by Contractor's Fulfillment Partners.

- a. Subject to Contractor's approval and the certifications held by its Fulfillment Partner, many Fulfillment Partners can also offer and provide some or all of the Services as listed above at competitive pricing, along with local presence and support. Contractor, as the prime, has sole discretion to determine what Services as listed above may be provided by the Fulfillment Partners. As the primary Contractor (OEM), Contractor is ultimately responsible for the service and performance of its Fulfillment Partners. Customers may have the option to purchase the Services to be directly delivered by Contractor (OEM) or its certified Fulfillment Partners.

2.4 Training — Learning offerings for IT professionals on networking technologies, including but not limited to designing, implementing, operating, configuring, and troubleshooting network systems pertaining to items provided under the master agreement.

Attachment C - Pricing Discounts & Value Added Services

Contractor

Cisco Systems, Inc.

Section 1: Pricing

Notes

1. % discounts are based on minimum discounts off Contractor's commercially published pricelists versus fixed pricing. Nonetheless, Orders will be fixed-price or fixed-rate and not cost reimbursable contracts. Contractor has the ability to update and refresh its respective price catalog, as long as the agreed-upon discounts are fixed.
2. Minimum guaranteed contract discounts do not preclude Contractor and/or its Fulfillment Partners from providing deeper or additional, incremental discounts at their sole discretion.
3. Purchasing Entities shall benefit from any promotional pricing offered by Contractor to similar customers. Promotional pricing shall not be cause for a permanent price change.
4. Contractor's price catalog shall only include offers that are in contract scope and within the awarded categories. Quotes to eligible Purchasing Entities shall be based on the then-current approved price catalog as posted on the NASPO ValuePoint's website as well as the Contractor's mandatory contract webpage.

Section 2: Minimum Discount % off List

Category 1.1 Unified Communications (UC)	
Hardware and Software (on premise)	35.00%
Cloud Services	10.00%
Service Packages (i.e., Maintenance, etc.)	10.00%
Category 1.2 Networking	
Hardware and Software (on premise)	35.00%
Cloud Services	10.00%
Service Packages (i.e., Maintenance, etc.)	10.00%
Category 1.3 Routers, Switches, Security, and Networking Storage	
Hardware and Software (on premise)	35.00%
Cloud Services	10.00%
Service Packages (i.e., Maintenance, etc.)	10.00%
Category 1.4 Wireless	
Hardware and Software (on premise)	35.00%
Cloud Services	10.00%
Service Packages (i.e., Maintenance, etc.)	10.00%
Category 1.5 Facility Management, Monitoring, and Control	
Hardware and Software (on premise)	35.00%
Cloud Services	10.00%
Service Packages (i.e., Maintenance, etc.)	10.00%

Section 3: Value Added Services

		Hourly Rates					
		Weekday		Weekend		State Holiday	
Title	Job Description	Onsite	Remote	Onsite	Remote	Onsite	Remote
Maintenance Services	Non-Packaged (i.e. not SMART Total Care); Not-To-Exceed (NTE) Rates	\$600.00	\$525.00	\$600.00	\$525.00	\$600.00	\$525.00
Professional Services	i.e. Cisco Advanced Services, IoT, NTE	\$743.17	\$661.17	\$743.17	\$661.17	\$743.17	\$661.17
Deployment Services	i.e. Cisco Implementation Services, IoT, NTE	\$743.17	\$661.17	\$743.17	\$661.17	\$743.17	\$661.17
Consulting Advisory Services	i.e. Cisco Advisory Services, IoT, NTE	\$743.17	\$661.17	\$743.17	\$661.17	\$743.17	\$661.17
Architectural Design Services	i.e. Cisco Advanced Services, IoT, NTE	\$743.17	\$661.17	\$743.17	\$661.17	\$743.17	\$661.17
Statement of Work Services	i.e. Cisco Advanced Services, IoT, NTE	\$743.17	\$661.17	\$743.17	\$661.17	\$743.17	\$661.17
Partner Services	Basic Install & Config Only (i.e. rack & stack, cabling, etc.), IoT, NTE	\$600.00	\$525.00	\$600.00	\$525.00	\$600.00	\$525.00
Training Deployment Services	i.e. Software Adoption, Cisco Training Services, NTE	\$600.00	\$525.00	\$600.00	\$525.00	\$600.00	\$525.00



DATA COMMUNICATION PRODUCTS &
SERVICES (2019-2026)
Led by the State of **Utah**

Master Agreement #: AR3227

Contractor: **Cisco Systems, Inc. (Contractor)**

Participating Entity: **State of Florida, Department of Management Services (Department)**

Agreement No. **43220000-NASPO-19-ACS**

1. **Scope:** This addendum covers the NASPO ValuePoint Master Agreement for Data Communications Products and Services led by the State of Utah (Lead State) for use by Agencies, as defined in section 287.012, Florida Statutes, and authorized by section 287.042(16), Florida Statutes. For purposes of this Participating Addendum, the Department and Cisco Systems, Inc. are collectively referred to herein as the "Parties."
2. **Alternate Contract Source Agreement (ACS):** ACS refers to this Participating Addendum, Exhibit A: Additional Special Contract Conditions, Exhibit B: Special Contract Conditions, and the Master Agreement and all attachments.
3. **Order of Precedence:** All terms and conditions contained in the ACS are incorporated as if fully set forth herein and shall remain in full force and effect throughout the term of the ACS unless modified in writing by the parties.

This Participating Addendum and Exhibit A: Additional Special Contract Conditions may only be modified or amended upon mutual written agreement by the Parties. If amendments are made to the Master Agreement, the Contractor shall: 1) notify the Department of such amendments; and 2) provided the Department is amenable to incorporating the amendments into the ACS, enter into a written amendment with the Department reflecting the addition of such amendments.

In the event of conflict, the following order of priority governs:

- a) This Participating Addendum and all Amendments, with the latest issued having priority;
- b) Exhibit A: Additional Special Contract Conditions;
- c) Exhibit B: Special Contract Conditions;
- d) Attachment A: NASPO ValuePoint Master Agreement Terms & Conditions;
- e) Attachment B: Scope Awarded to Contractor
- f) Attachment C: Pricing Discounts and Value-Added Services
- g) An Order issued against the ACS;
- h) Attachment A: NASPO ValuePoint Master Agreement Terms & Conditions, Exhibits 1 and 2;
- i) The Solicitation, SK18001 (Request for Proposals), Data Communications Products and Services;
- j) The Contractor's response to the Solicitation, as revised (if permitted) and accepted

DATA COMMUNICATION PRODUCTS &
SERVICES (2019-2026)

Led by the State of **Utah**
by the Lead State.

4. Term of the Participating Addendum:

- a) **Initial Term:** The initial term of the ACS will become effective on the last date the document is signed by all Parties, whichever is later, and shall be effective through September 30, 2024, unless terminated earlier, in accordance with Exhibit A: Additional Special Contract Conditions or Exhibit B: Special Contract Conditions.
- b) **Renewal:** Upon agreement of the Parties, the Department and the Contractor may renew the ACS in accordance with section 287.057(13), Florida Statutes, and Rule 60A-1.048, Florida Administrative Code. Renewals must be in writing and are subject to the same term, conditions, and modifications set forth in the ACS. The Contractor and the Department may negotiate renewal term pricing, which shall not exceed the pricing provided during the initial term as set forth in the Master Agreement.

5. Product and Service Offering: The Contractor is authorized to provide the Products and Services set forth in Attachment C of the Master Price Agreement AR3227 as follows:

- Category 1.1: Unified Communications
- Category 1.2: Networking
- Category 1.3: Routers, Switches, Security, and Storage Networking
- Category 1.4: Wireless
- Category 1.5: Facility Management, Monitoring, and Control

Value Added Services are permitted under this PA to the extent they are within the scope of the Master Agreement, and do not overlap with services offered through a state term contract, agency customers are obligated to use the state term contract(s) to purchase the service(s).

6. Master Price Agreement Number: All purchase orders issued by agencies within the jurisdiction of this Participating Addendum shall include the NASPO ValuePoint Master Agreement number: AR3227 and Participating Addendum/ACS number: 43220000-NASPO-19-ACS.



DATA COMMUNICATION PRODUCTS &
SERVICES (2019-2026)
Led by the State of **Utah**

7. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Gigi Feril
Address:	170 West Tasman Dr. San Jose CA 95134
Telephone:	(408) 424-0712
Email:	nvp-help@cisco.com

State of Florida

Name:	Christia Nunnery
Address:	4050 Esplanade Way, Tallahassee Florida 32399
Telephone:	850-488-8367
Email:	Christia.nunnery@dms.myflorida.com

8. **Participating State or Entity Terms and Conditions**

Participating State or Entity must check one of the boxes below. These modifications or additions apply only to actions and relationships within the State of Florida. A Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to its contractual relationship with the Contractor under the Terms and Conditions of the State of Utah NASPO ValuePoint Master Agreement.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions:

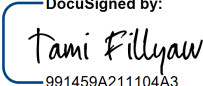
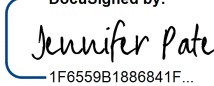
Exhibit A – Additional Special Contract Conditions
Exhibit B – Special Contract Conditions

NASPO ValuePoint
PARTICIPATING ADDENDUM



DATA COMMUNICATION PRODUCTS &
SERVICES (2019-2026)
Led by the State of **Utah**

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the date of execution by both parties below.

Participating State: State of Florida	Contractor: Cisco Systems, Inc.
By: <small>DocuSigned by:</small>  <small>991459A211104A3...</small>	By: <small>DocuSigned by:</small>  <small>1F6559B1886841F...</small>
Name: Tami Fillyaw	Name: Jennifer Pate
Title: Chief of Staff	Title: Authorized Signatory
Date: 6/9/2021 9:37 PM EDT	Date: 6/8/2021 1:23 PM PDT



ADDITIONAL SPECIAL CONTRACT CONDITIONS

Exhibit A

The following changes are modifying or supplementing the Master Agreement and ACS terms and conditions. These modifications or additions apply only to actions and relationships within the ACS.

Upon execution of the ACS, Customers may purchase products and services under contract using the State of Florida Alternate Contract Source Number 43220000-NASPO-19-ACS.

- A. Vendor Registration: In order to complete any transaction between an Individual Customer and the Contractor, the Contractor must be registered in [MyFloridaMarketPlace](#).
- B. Purchases: In order to procure products and services hereunder, Customers shall issue purchase orders or use a purchasing card which shall reference Florida Alternate Contract Source Number 43220000-NASPO-19-ACS. Customers are responsible for reviewing the terms and conditions of this ACS, including all Exhibits.
- C. Additional Customer Terms: If any additional ordinance, rule, or other local governmental authority requires additional contract language before a Customer can make a purchase under this ACS, the Customer is responsible for entering a separate agreement with the Contractor and capturing that additional contract language therein.
- D. The State of Florida's performance and obligation to pay under this ACS is contingent upon an annual appropriation by the Legislature. The vendor shall comply with section 11.062, Florida Statutes and section 216.347, Florida Statutes, prohibiting use of funds to lobby the Legislature, Judicial, or state agencies.
- E. Product and Service Offerings: The Contractor is authorized to provide Products and Services as referenced in Section 5 of the Participating Addendum (PA). Any Product or Service offerings not listed are not approved.
- F. Employment Eligibility Verification: The language of subsection 13.2 of the Special Contract Conditions regarding E-Verify shall apply to resellers as well as other subcontractors.

- G. Price List/Preferred Price: The Contractor's price list will be the same as the NASPO ValuePoint price list, and the Department will post a link on the Department's website to the price list posted on the NASPO ValuePoint website. Contractors are encouraged to provide special pricing and/or tiered discount rates applicable to State of Florida Customers wherever possible.
- H. Orders: Any Order placed by a Customer for a Product and/or Service available under the Master Agreement shall be deemed to be a sale under and governed by the terms and conditions of the ACS. A Customer may request more stringent terms than provided in this PA. To the extent the Customer and the Contractor agree on additional terms, the terms will be documented on the Customer Order, signed by both parties, and integrated into the ACS order of precedence as reflected on the PA.
- I. Electronic Invoicing: The Contractor or Fulfillment Partner(s) may supply electronic invoices in lieu of paper-based invoices for those transactions processed through MFMP. Electronic invoices may be submitted to the agency through one of the mechanisms as listed below:
 - a. EDI (Electronic Data Interchange)
This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog goods and services.
 - b. PO Flip via AN
The online process allows Contractors or Fulfillment Partner(s) to submit invoices via the AN for catalog and non-catalog goods and services. Contractors or Fulfillment Partner(s) have the ability to create an invoice directly from their Inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor or Fulfillment Partner(s) warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a state contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor or Fulfillment Partner(s) warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within the system the Contractor's or Fulfillment Partner(s) trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor or Fulfillment Partner(s) under the contract.

The Contractor or Fulfillment Partner(s) will work with the MFMP management team to obtain specific requirements for the electronic invoicing if needed.

- J. Product Installation & Invoicing: Contractor or Fulfillment Partner(s) will provide timely billing and Customer will notify Contractor or Fulfillment Partner(s), in writing, of any billing concern.

- K. Contract Reporting: The Contractor shall report information on orders received from Customers associated with the ACS.

The Contractor shall submit reports in accordance with the following schedule:

Report	Period Covered	Due Dates
MFMP Transaction Report	Calendar month	20 calendar days after close of the period
Contract Quarterly Sales Report	State's Fiscal Quarter	30 calendar days after close of the period

No favorable action will be considered for any contractor who has outstanding Contract Quarterly Sales Reports, MFMP Transaction Fee Reports, or any other documentation, to include fees / monies that is required under the ACS.

- a. Contract Quarterly Sales Report: The Contractor agrees to submit a Quarterly Sales Report to the Department's Contract Manager within 30 calendar days after the close of each State Fiscal quarter.

Quarterly reporting timeframes coincide with the State Fiscal Year as follows:

Quarter 1 - (July-September) – due October 30th.

Quarter 2 - (October-December) – due January 30th.

Quarter 3 - (January-March) – due April 30th.

Quarter 4 - (April-June) – due July 30th.

Quarterly reporting requirements begin the date of ACS execution. Reports must be submitted in MS Excel format and can be retrieved by accessing the FL DMS Quarterly Sales Report Form. The report will include all sales (invoiced) from Customers received (associated with this ACS) during the period. Initiation and submission of the Quarterly Report is the responsibility of the Contractor without prompting or notification from the Department's Contract Manager. If no orders are received during the period, the Contractor must submit a report stating that there was no activity. If the Contractor fails to submit two consecutive quarterly sales reports, this ACS may be terminated for convenience or the Department may choose to not renew the ACS.

In addition, the Department may require additional sales information such as copies of purchase orders, or ad hoc sales reports. The Contractor shall submit these specific ad hoc requests within the specified amount of time as requested by the Department.

- b. MFMP Transaction Fee Report: The Contractor is required to submit monthly Transaction Fee Reports in the Department's electronic format. Reports are due 20 calendar days after the end of the reporting period. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendor on the MFMP

website: MFMP Transaction Fee and Reporting. Assistance is also available with the Transaction Fee Reporting System from the MFMP Customer Service Desk by email at feeprocessing@myfloridamarketplace.com or telephone 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. Eastern Time.

- L. Ad hoc Reports: The Department reserves the right to require additional reports or information pertaining to this ACS and any resulting purchase orders or contracts with customers. The Contractor must submit a report or information within five (5) business days after receipt of a Department request, unless otherwise approved by the Department.
- M. Financial Consequences: The following financial consequences will be assessed for nonperformance of the Quarterly Sales Report and Monthly Transaction Fee Report requirements. The State reserves the right to withhold payment or implement other appropriate remedies, such as contract termination or nonrenewal. These consequences for non-performance are not to be considered penalties.

Performance Metrics	Description	Performance Target	Frequency	Financial Consequence for Non-Performance (Per Day Late)
Quarterly Sales Report Submission	Quarterly Sales Report are due on or before the 30 th calendar day after close of a quarter.	100%	Quarterly	\$250
Monthly Transaction Fee Report	Transaction Fee Report are due on or before the 20 th calendar day after close of the period.	100%	Monthly	\$100

The financial consequences will be paid via check or money order and made out to the Department of Management Services in US Dollars within 30 calendar days after the required report submission date. These consequences are individually assessed for failures over each target period beginning with the first full month or quarter of the contract performance and every quarter thereafter.

- N. Business Review Meetings: The Department reserves the right to schedule business review meetings as frequently as necessary. The Participating State will provide the format for the Contractor's agenda. Prior to the meeting, the Contractor shall submit the completed agenda to the Participating State/Entity for review and acceptance. The Contractor shall address the agenda items and any of the Participating State's additional concerns at the meeting. At minimum, the parties shall meet to discuss:
 - a. Program compliance
 - b. Program trending review
 - c. Savings report: Hard dollar and soft dollar
 - d. Spend report
 - e. Subcontractor and contingent staff performance
 - f. Recommendations for improved compliance and performance

Failure to comply with this section may result in the Contractor being found in default and PA termination.

- O. Resellers/Partners: The Contractor may use resellers/partners which includes, but is not limited to, Fulfillment Partner(s), in order to provide equipment and services. All such resellers/partners shall be the direct responsibility of the Contractor. The Contractor is responsible for all liability, terms, and conditions within the ACS and the Customer Order, including work performed by a reseller/partner. The Contractor's resellers/partners' participation will be in accordance with the terms and conditions set forth in the ACS and the Customer Order. The Contractor agrees for all such resellers/partners providing commodities and performing services in furtherance of the Contract, the Contractor agrees to include a requirement in all reseller/partner agreements to adhere to all Contract terms. If a reseller/partner is authorized to conduct business on behalf of the Contractor and the reseller/partner is to receive compensation from the Contractor for its services, then any dispute between the Contractor and the reseller/partner shall be resolved between the Contractor and the reseller/partner. The State of Florida is not a party to any agreement entered into between the Contractor and its resellers/partners.

The Contractor shall be responsible to report all contract sales (and pay any associated MFMP transaction fees), including those of any such resellers/partners and shall ensure that all such resellers/partners meet the following requirements:

- Have an active registration with the Florida Department of State, Division of Corporations (www.sunbiz.org)
- Registered in the MFMP Vendor Information Portal (<https://vendor.myfloridamarketplace.com>)
- Not be on the State of Florida's Convicted, Suspended, or Discriminatory lists http://www.dms.myflorida.com/business_operations/State_purchasing/vendor_information/convicted_suspended_discriminatory_complaints_vendor_lists
- Have a copy of e-Verify Status on file
- Have a current W-9 filed with the Florida Department of Financial Services (<https://flvendor.myfloridacfo.com>)

- P. All licenses obtained under this ACS shall be transferable to the extent necessary for any Customer reorganization under section 20.06, Florida Statutes.

- Q. The following modifications are made to Exhibit B, Special Contract Conditions:

- i. Exhibit B, Special Contract Conditions Section 6.4.2, Rejected Commodities, is hereby deleted and replaced in its entirety with the following:

6.4.2 Rejected Commodities.

When a Customer rejects a commodity, Contractor will remove the commodity from the premises within thirty (30) calendar days after notification of rejection, and the risk of loss will remain with the Contractor. Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of such commodities. Contractor will

reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

- ii. Exhibit B, Special Contract Conditions Section 7.2, General Liability Insurance, is hereby deleted and replaced in its entirety with the following:

7.2 General Liability Insurance

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal and advertising injury, and completed operations with limits of \$2,000,000 per occurrence and \$4,000,000 annual aggregate. This insurance must provide coverage for claims that arise from performance of the Contract or completed operations, whether by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance must include the State of Florida as an additional insured for the entire length of the resulting contract for liabilities that fall within Contractor's indemnity obligations under this Contract and that are covered by such insurance.

- iii. Exhibit B, Special Contract Conditions Section 7.3, Florida Authorized Insurers, is hereby deleted and replaced in its entirety with the following:

7.3 Florida Authorized Insurers

All insurance shall be with insurers authorized and eligible to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all required coverage is in place and showing the Department to be an additional insured as required by Section 7.2 above.

- iv. Exhibit B, Special Contract Conditions Section 7.5, Indemnification, is hereby deleted and replaced in its entirety with the following:

7.5 Indemnification

7.5.1 General Indemnity

Contractor shall defend, indemnify and hold harmless the Customer and the State of Florida, its corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all fines, claims, assessments, suits, judgments, losses, liabilities, damages, and expenses (including, without limitation, consequential, special, indirect, and punitive damages, including, court costs and attorney's fees, as any such damages are determined by a court of law or are set forth and agreed upon in a settlement agreement), including without limitation, those based on contract or tort, arising out of or in connection with a claim, suit or proceeding brought by a third party based upon bodily injury (including death) or damage to tangible personal property (not including lost or damaged data) arising from the acts or omissions of the Contractor or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them. In the event that the Customer's negligent or intentional acts or omissions contributed to cause the injury or damage for which a claim of indemnity is being asserted against the Contractor hereunder, the damages and expenses (including, without limitation, reasonable attorney's fees) shall be allocated or reallocated, as the case may be, between the Contractor and the Customer in such proportion as jointly determined by

the Contractor and the Customer. Such determination of proportionality shall appropriately reflect the relative fault of such parties, or their subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them, and the liability of the Contractor shall be proportionately reduced based upon the Customer and Contractor's joint agreement determining the proportion of damages and expenses to be reallocated.

The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties. The foregoing indemnification obligations are conditioned upon the Customer promptly notifying the Contractor in writing of the claim, suit or proceeding for which the Contractor is obligated under this Section, cooperating with, assisting and providing information to, the Contractor as reasonably required, and granting the Contractor the right to defend or settle such claim, suit or proceeding.

7.5.2 Intellectual Property Indemnification

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Customer and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, (including, without limitation, consequential, special, indirect, and punitive damages including court costs and attorney's fees, as any such damages are determined by a court of law or are set forth and agreed upon in a settlement agreement), arising from or related to an Intellectual Property Rights Claim ("IPR Claim") that any product or service supplied under this Agreement violates or infringes Third Party Intellectual Property Rights ("IPR"). Contractor's obligations to defend the IPR Claim and indemnify the Customer and the State of Florida, are conditional upon:

- Customer notifying Contractor promptly in writing of the IPR Claim or threat thereof;
- Customer giving Contractor authority to defend and settle the IPR Claim and any subsequent appeal; and
- Customer giving Contractor all information and assistance reasonably requested by Contractor in connection with the conduct of the defense and settlement of the IPR Claim and any subsequent appeal.

Third Party IPR as used within this section means a United States copyright existing as at the Effective Date or a United States patent issued as at the Effective Date.

If an IPR Claim has been made, or in Contractor's opinion is likely to be made, Contractor agrees, at Contractor's option and expense, either to: (a) procure for Customer the right to continue using the Product; or (b) replace or modify the Product so that there is no longer an infringement. In the event Contractor, using all available resources and best efforts, is unable to resolve the IPR claim and/or implement one of these two options, Contractor shall provide the Department and Customers with 10 business days advance written notice of Contractor's need to terminate both the Contractor's and Customer's respective rights and obligations under the Customer's agreement with regard to the product or service. Customer will promptly return the product to Contractor and or discontinue use of the service. Contractor will refund to Customer a prorated portion of the amount paid for the products or services for the remainder of the unexpired usage term.

Notwithstanding the foregoing, Contractor has no obligation or liability for any IPR Claim arising from a Customer performing any of the following:

- Combining, operating, or using a product or service supplied under this Agreement with any product, device, or software not supplied by Contractor which results in an IPR Claim issued for the Contractor provided product or service;
 - Altering or modifying any product or service supplied under this Agreement which results in an IPR Claim issued for that product or service;
 - Requiring Contractor comply with Customer's designs, specifications, requests, or instructions which results in an IPR Claim issued for that product or service; or
 - Continuing to use the product or service as is after Contractor has notified Customer in writing of the requirement to implement modifications or changes capable of being made by the Customer in or to the product or service to avoid such an IPR Claim and failing to utilize the replacement product or service offered by Contractor;
- or
- Revenue generating activities or earnings made by Customer from services that it provides to external or internal customers that makes use of the product or services where such revenue generating activities results in the IPR claim issued for that product or service.

This Section states the entire obligation of Contractor and its suppliers, and the exclusive remedy of Customer, with respect to any infringement or alleged infringement of any intellectual property rights or proprietary rights. The Customer and the Department, however, shall maintain all other rights and remedies available under this Contract and under state or federal law as may be applicable to an infringement or alleged infringement of any intellectual property or proprietary rights.

The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties.

- v. Exhibit B, Special Contract Conditions Subsection 8.4.1, Ownership, is hereby deleted and replaced in its entirety with the following:

8.4.1 Ownership.

The parties do not anticipate that any intellectual property will be developed as a result of this Contract. However, except as otherwise expressly set forth in an applicable Statement of Work ("SOW") and unless specifically addressed otherwise in the Contract, the State of Florida shall retain all intellectual property rights to its data and property. Cisco and its licensors retain ownership in all intellectual property rights in and to the Cisco Content Software, Cloud Service and all underlying technology and associated documentation related thereto.

- vi. Exhibit B, Special Contract Conditions Section 9, Data Security, is hereby deleted and replaced in its entirety with the following:

9 Data Security

The Contractor will implement measures designed to maintain the security of Customer data received from the Customer or its users ("State of Florida Data") including, but not limited to, following 'clean desk' practices and ensuring that State of Florida Data is not left unattended at public workspaces and ensuring State of Florida Data is stored and secured when not in use. Contractor and its subcontractors cannot guarantee that all of its products and services will be performed inside the United States, and cannot guarantee that State of Florida Data will only be accessed within the United States. Contractor will continuously provide the Department and Customers with the most accurate and current information about which of services and products available under

this Contract cannot be performed inside the United States and/or may require State of Florida Data to be sent, transmitted, or accessed outside of the United States. When Contractor provides cloud computing, as defined in Rule 60GG-4.002(4)(b), F.A.C., Contractor agrees to cooperate with the Customer and perform all actions necessary to assist with all tasks in furtherance of the Customer's efforts to comply with the obligations under Rule 60GG-4, F.A.C., as applicable.

In the event of a Security Breach involving State of Florida Data attributable to the Customer or its users, the Contractor shall give notice to the Customer at the address provided by the Customer and the Department within forty-eight (48) hours of the Security Breach. A Security Breach, for purposes of this section, will refer to a confirmed event that compromises the confidentiality, integrity, or availability of State of Florida data ("Security Breach"). Once a Security Breach has been contained, the Contractor must provide the Department with a post-incident report documenting all relevant containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party, approved by both Parties (such approval shall not be unreasonably withheld), to audit Contractor's findings and produce an independent report. The Contractor shall cooperate in good faith with the third party audit, which shall take place on the specific start date agreed to by the Parties, occur during normal working hours, and be performed in accordance with the Contractor's facility access procedures where facility access is required. Release statements shall not be required for the Department or its designee to conduct such audits. The scope, duration, and location of the audit will be jointly determined by the Parties based upon the Security Breach being audited, and such approval shall not be unreasonably withheld. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information applicable to Contractor or the services provided under this Contract. The Contractor will make available to Customers and the Department information about which of its offers are HIPAA compliant, and the Customer will provide Contractor with notice that protected health information may be shared with Contractor.

Except for any liability which cannot be limited or excluded under mandatory applicable law, Cisco shall be liable for any and all claims, losses, liabilities, damages, and expenses arising out of or in connection with a claim, suit or proceeding brought by a third party based upon a Security Breach (whether for breach of contract, misrepresentations, negligence, strict liability, other torts or otherwise). Such liability shall not exceed \$1,000,000.00 (one million dollars) in U.S. dollars per Event and \$10,000,000.00 (ten million dollars) in the aggregate for all claims arising under this Agreement. For purposes of determining the liability due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same off-shore entity) will be treated as a single Event ("Event").

- vii. Exhibit B, Special Contract Conditions Section 11.3.2, Liquidated Damages, is hereby deleted in its entirety.
- viii. Exhibit B, Special Contract Conditions subsection 13.1, Background Check, is hereby deleted and replaced in its entirety with the following:

13.1 Background Check.

The Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, agents, representatives, and subcontractors operating under its direction with Access to State

of Florida Data. The Contractor agrees such screening will be done before an individual is provided Access to state of Florida data. The cost of the background check will be borne by the Contractor. The Department or Customer may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background check results. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest.

Access as referenced in this subsection shall mean review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.

- ix. Exhibit B, Special Contract Conditions subsection 13.2, E-Verify, is hereby deleted and replaced in its entirety with the following:

13.2 Employment Eligibility Verification.

The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of section 448.095, F.S., and maintain a copy of such affidavit for the duration of the Contract. In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Department's Contract Manager within five (5) days of Contract execution.

This section serves as notice to the Contractor regarding the requirements of section 448.095, F.S., specifically sub-paragraph (2)(c)1, and the Department's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated section 448.09(1), F.S. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one (1) year after the date of such termination. The Department reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Department develop a good faith belief that the subcontractor has knowingly violated section 448.09(1), F.S.

SPECIAL CONTRACT CONDITIONS JULY 1, 2019 VERSION

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In accordance with Rule 60A-1.002(7), F.A.C., Form PUR 1000 is included herein by reference but is superseded in its entirety by these Special Contract Conditions.

SECTION 1. DEFINITION.

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes (F.S.), and Rule Chapter 60A-1, Florida Administrative Code (F.A.C.):

1.1 Customer.

The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

SECTION 2. CONTRACT TERM AND TERMINATION.

2.1 Initial Term.

The initial term will begin on the date set forth in the Contract documents or on the date the Contract is signed by all Parties, whichever is later.

2.2 Renewal.

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(13), F.S.

2.3 Suspension of Work and Termination.

2.3.1 Suspension of Work.

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Customer may suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will provide the Contractor written notice outlining the particulars of the suspension. After receiving a suspension notice, the Contractor must comply with the notice and will cease the performance of the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation. The Contractor will not resume performance of the Contract or purchase order until so authorized by the Department.

2.3.2 Termination for Convenience.

The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor.

2.3.3 Termination for Cause.

If the performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may:

- (a) immediately terminate the Contract;
- (b) notify the Contractor of the noncompliance or default, require correction, and specify the date by which the correction must be completed before the Contract is terminated; or
- (c) take other action deemed appropriate by the Department.

SECTION 3. PAYMENT AND FEES.

3.1 Pricing.

The Contractor will not exceed the pricing set forth in the Contract documents.

3.2 Price Decreases.

The following price decrease terms will apply to the Contract:

3.2.1 Quantity Discounts. Contractor may offer additional discounts for one-time delivery of large single orders;

3.2.2 Preferred Pricing. The Contractor guarantees that the pricing indicated in this Contract is a maximum price. Additionally, Contractor's pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those that are similar in size, scope, and terms. In compliance with section 216.0113, F.S., Contractor must annually submit an affidavit from the Contractor's authorized representative attesting that the Contract complies with this clause.

3.2.3 Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, the Contractor may conduct sales promotions involving price reductions for a specified lesser period. The Contractor must submit documentation identifying the proposed: (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

3.3 Payment Invoicing.

The Contractor will be paid upon submission of invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain sufficient detail for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

3.4 Purchase Order.

A Customer may use purchase orders to buy commodities or contractual services pursuant to the Contract and, if applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. Purchase orders issued pursuant to the Contract must be received by the Contractor no later than the close of business on the last day of the Contract's term. The Contractor is required to accept timely purchase orders specifying delivery schedules that extend beyond the Contract term even when such extended delivery will occur after expiration of the Contract. Purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the Contract shall survive the termination or expiration of the Contract and apply to the Contractor's performance. The duration of purchase orders for recurring deliverables shall not exceed the expiration of the Contract by more than twelve months. Any purchase order terms and conditions conflicting with these Special Contract Conditions shall not become a part of the Contract.

3.5 Travel.

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing and may be reimbursed only in accordance with section 112.061, F.S.

3.6 Annual Appropriation.

Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

3.7 Transaction Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), F.S. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

3.8 Taxes.

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Customer or Department unless authorized by Florida law.

3.9 Return of Funds.

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

SECTION 4. CONTRACT MANAGEMENT.

4.1 Composition and Priority.

The Contractor agrees to provide commodities or contractual services to the Customer as specified in the Contract. Additionally, the terms of the Contract supersede the terms of all prior agreements between the Parties on this subject matter.

4.2 Notices.

All notices required under the Contract must be delivered to the designated Contract Manager in a manner identified by the Department.

4.3 Department's Contract Manager.

The Department's Contract Manager, who is primarily responsible for the Department's oversight of the Contract, will be identified in a separate writing to the Contractor upon Contract signing in the following format:

Department's Contract Manager Name

Department's Name
Department's Physical Address
Department's Telephone #
Department's Email Address

If the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

4.4 Contractor's Contract Manager.

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be identified in a separate writing to the Department upon Contract signing in the following format:

Contractor's Contract Manager Name
Contractor's Name
Contractor's Physical Address
Contractor's Telephone #
Contractor's Email Address

If the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

4.5 Diversity.

4.5.1 Office of Supplier Diversity.

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at osdinfo@dms.myflorida.com.

4.5.2 Diversity Reporting.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each agency purchasing under the Contract.

4.6 RESPECT.

Subject to the agency determination provided for in section 413.036, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES;

AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INSOFAR AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about RESPECT and the commodities or contractual services it offers is available at <https://www.respectofflorida.org>.

4.7 PRIDE.

Subject to the agency determination provided for in sections 287.042(1) and 946.515, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <https://www.pride-enterprises.org>.

SECTION 5. COMPLIANCE WITH LAWS.

5.1 Conduct of Business.

The Contractor must comply 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. For example, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. The provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference.

5.2 Dispute Resolution, Governing Law, and Venue.

Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives all privileges and rights relating to venue it may have under Chapter 47, F.S., and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to, those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

5.3 Department of State Registration.

Consistent with Title XXXVI, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

5.4 Suspended, Convicted, and Discriminatory Vendor Lists.

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List, or Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the Suspended Vendor List, Convicted Vendor List, or Discriminatory Vendor List during the term of the Contract.

5.5 Scrutinized Companies - Termination by the Department.

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

5.6 Cooperation with Inspector General and Records Retention.

Pursuant to section 20.055(5), F.S., the Contractor understands and will comply with its duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for the longer of five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor agrees to impose the same obligations to cooperate with the Inspector General and retain records on any subcontractors used to provide goods or services under the Contract.

SECTION 6. MISCELLANEOUS.

6.1 Subcontractors.

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all its subcontracted work. The Department supports diversity in its procurements and contracts, and requests that the Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The

Contractor may contact the OSD at osdhelp@dms.myflorida.com for information on certified small business enterprises available for subcontracting opportunities.

6.2 Assignment.

The Contractor will not sell, assign, or transfer any of its rights, duties, or obligations under the Contract without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract with prior written notice to the Contractor.

6.3 Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are independent contractors and not employees or agents of the State of Florida and are not entitled to State of Florida benefits. The Department and Customer will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all its subcontracts under the Contract.

6.4 Inspection and Acceptance of Commodities.

6.4.1 Risk of Loss.

Matters of inspection and acceptance are addressed in section 215.422, F.S. Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: record any evidence of visible damage on all copies of the delivering carrier's bill of lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's bill of lading and damage inspection report.

6.4.2 Rejected Commodities.

When a Customer rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor. Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor, and the Customer will have the right to dispose of such commodities. Contractor will reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

6.5 Safety Standards.

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

6.6 Ombudsman.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

6.7 Time is of the Essence.

Time is of the essence regarding every obligation of the Contractor under the Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

6.8 Waiver.

The delay or failure by the Department or the Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

6.9 Modification and Severability.

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

6.10 Cooperative Purchasing.

Pursuant to their own governing laws, and subject to the agreement of the Contractor, governmental entities that are not Customers may make purchases under the terms and conditions contained herein, if agreed to by Contractor. Such purchases are independent of the Contract between the Department and the Contractor, and the Department is not a party to these transactions. Agencies seeking to make purchases under this Contract are required to follow the requirements of Rule 60A-1.045(5), F.A.C.

SECTION 7. LIABILITY AND INSURANCE.

7.1 Workers' Compensation Insurance.

The Contractor shall maintain workers' compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all subcontractors to similarly provide workers' compensation insurance for all of the latter's employees. In the event work is being performed by the Contractor under the Contract and any class of employees performing the work is not protected under Workers' Compensation statutes, the Contractor must provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of employees not otherwise protected.

7.2 General Liability Insurance.

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal and advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from performance of the Contract or completed operations, whether by the Contractor or anyone directly or indirectly employed by the Contractor. Such insurance must include the State of Florida as an additional insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

7.3 Florida Authorized Insurers.

All insurance shall be with insurers authorized and eligible to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

7.4 Performance Bond.

Unless otherwise prohibited by law, the Department may require the Contractor to furnish, without additional cost to the Department, a performance bond or irrevocable letter of credit or other form of security for the satisfactory performance of work hereunder. The Department shall determine the type and amount of security.

7.5 Indemnification.

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Customer and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right or out of any acts, actions, breaches, neglect, or omissions of the Contractor, its employees, agents, subcontractors, assignees, or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Customer. The Contract does not constitute a waiver of sovereign immunity or consent by the Customer or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the Customer may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

7.6 Limitation of Liability.

Unless otherwise specifically enumerated in the Contract or in the purchase order, neither the Department nor the Customer shall be liable for special, indirect, punitive, or consequential damages, including lost data or records (unless the Contract or purchase order requires the Contractor to back-up data or records), even if the Department or Customer has been advised that such damages are possible. Neither the Department nor the Customer shall be liable for lost profits, lost revenue, or lost institutional operating savings. The Department or Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT, AND INTELLECTUAL PROPERTY.

8.1 Public Records.

8.1.1 Termination of Contract.

The Department may terminate the Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, F. S., made or received by the Contractor in conjunction with the Contract.

8.1.2 Statutory Notice.

Pursuant to section 119.0701(2)(a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS, AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency 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, F.S., or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

8.2 Protection of Trade Secrets or Otherwise Confidential Information.

8.2.1 Contractor Designation of Trade Secrets or Otherwise Confidential Information. If the Contractor considers any portion of materials to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be

responsible for responding to and resolving all claims for access to Contract-related materials it has designated trade secret or otherwise confidential.

8.2.2 Public Records Requests.

If the Department receives a public records request for materials designated by the Contractor as trade secret or otherwise confidential under Florida or federal law, the Contractor will be responsible for taking the appropriate legal action in response to the request. If the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential, the Department will provide the materials to the requester.

8.2.3 Indemnification Related to Confidentiality of Materials.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of materials as trade secret or otherwise confidential.

8.3 Document Management.

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers, and documents that were made in relation to this Contract. The Contractor must retain all documents related to the Contract for five (5) years after expiration of the Contract or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at the Department of State's Records Management website.

8.4 Intellectual Property.

8.4.1 Ownership.

Unless specifically addressed otherwise in the Contract, the State of Florida shall be the owner of all intellectual property rights to all property created or developed in connection with the Contract.

8.4.2 Patentable Inventions or Discoveries.

Any inventions or discoveries developed in the course, or as a result, of services in connection with the Contract that are patentable pursuant to 35 U.S.C. § 101 are the sole property of the State of Florida. Contractor must inform the Customer of any inventions or discoveries developed or made through performance of the Contract, and such inventions or discoveries will be referred to the Florida Department of State for a determination on whether patent protection will be sought. The State of Florida will be the sole owner of all patents resulting from any invention or discovery made through performance of the Contract.

8.4.3 Copyrightable Works.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed through performance of the Contract are owned solely by the State of Florida.

SECTION 9. DATA SECURITY.

The Contractor will maintain the security of State of Florida data including, but not limited to, maintaining a secure area around any displayed visible data and ensuring data is stored and secured when not in use. The Contractor and subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida data to be sent by any medium, transmitted, or accessed outside the United States due to Contractor's action or inaction. In the event of a security breach involving State of Florida data, the Contractor shall give notice to the Customer and the Department within one business day. "Security breach" for purposes of this section will refer to a confirmed event that compromises the confidentiality, integrity, or availability of data. Once a data breach has been contained, the Contractor must provide the Department with a post-incident report documenting all containment, eradication, and recovery measures taken. The Department reserves the right in its sole discretion to enlist a third party to audit Contractor's findings and produce an independent report, and the Contractor will fully cooperate with the third party. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.

10.1 Gratuities.

The Contractor will not, in connection with this Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer's or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

10.2 Lobbying.

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not to be used for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to section 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract after the Contract is executed and during the Contract term.

10.3 Communications.

10.3.1 Contractor Communication or Disclosure.

The Contractor shall not make any public statements, press releases, publicity releases, or other similar communications concerning the Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with the Contract, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

10.3.2 Use of Customer Statements.

The Contractor shall not use any statement attributable to the Customer or its employees for the Contractor's promotions, press releases, publicity releases, marketing, corporate communications, or other similar communications, without first notifying the Customer's Contract Manager and securing the Customer's prior written consent.

SECTION 11. CONTRACT MONITORING.

11.1 Performance Standards.

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof.

11.2 Performance Deficiencies and Financial Consequences of Non-Performance.

11.2.1 Proposal of Corrective Action Plan.

In addition to the processes set forth in the Contract (e.g., service level agreements), if the Department or Customer determines that there is a performance deficiency that requires correction by the Contractor, then the Department or Customer will notify the Contractor. The correction must be made within a time-frame specified by the Department or Customer. The Contractor must provide the Department or Customer with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department or Customer.

11.2.2 Retainage for Unacceptable Corrective Action Plan or Plan Failure.

If the corrective action plan is unacceptable to the Department or Customer, or implementation of the plan fails to remedy the performance deficiencies, the Department or Customer will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department or Customer for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited to compensate the Department or Customer for the performance deficiencies.

11.3 Performance Delay.

11.3.1 Notification.

The Contractor will promptly notify the Department or Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or the Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or the Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

11.3.2 Liquidated Damages.

The Contractor acknowledges that delayed performance will damage the Department/Customer, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in the Contract documents will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

11.4 Force Majeure, Notice of Delay, and No Damages for Delay.

The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay, and the delay is due directly to fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar cause wholly beyond the Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. The foregoing does not excuse delay which could have been avoided if the Contractor implemented any risk mitigation required by the Contract. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that created or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers and the Department with respect to commodities or contractual services subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the commodity or contractual services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

SECTION 12. CONTRACT AUDITS.

12.1 Performance or Compliance Audits.

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners, or agents of the Contractor, pertaining to the Contract, may be inspected by the Department upon fifteen (15) calendar days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners, or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The Inspector General, in accordance with section 5.6, the State of Florida's Chief Financial Officer, the Office of the Auditor General also have authority to perform audits and inspections.

12.2 Payment Audit.

Records of costs incurred under terms of the Contract will be maintained in accordance with section 8.3 of these Special Contract Conditions. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, the State of Florida's Chief Financial Officer, or the Office of the Auditor General.

SECTION 13. BACKGROUND SCREENING AND SECURITY.

13.1 Background Check.

The Department or Customer may require the Contractor to conduct background checks of its employees, agents, representatives, and subcontractors as directed by the Department or Customer. The cost of the background checks will be borne by the Contractor. The Department or Customer may require the Contractor to exclude the Contractor's employees, agents, representatives, or subcontractors based on the background check results. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within three (3) calendar days any arrest for any disqualifying offense. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. Upon the request of the Department or Customer, the Contractor will re-screen any of its employees, agents, representatives, and subcontractors during the term of the Contract.

13.2 E-Verify.

The Contractor must use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is <https://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

13.3 Disqualifying Offenses.

If at any time it is determined that a person has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida data or directly performing services under the Contract. The disqualifying offenses are as follows:

- (a) Computer related crimes;
- (b) Information technology crimes;

- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

13.4 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the commodities or contractual services provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

SECTION 14. WARRANTY OF CONTRACTOR'S ABILITY TO PERFORM.

The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.

EXHIBIT C



United Data Technologies Inc
 2900 Monarch Lakes Blvd, Suite 300
 Miramar, Florida 33027
 United States
 (P) 954-308-5100

Quotation (Open)	
Date Sep 30, 2021 10:54 AM EDT	Expiration Date 10/30/2021
Modified Date Sep 30, 2021 01:51 PM EDT	
Quote # COQO-16848 - rev 1 of 1	
Description Airport Expansion	
SalesRep Perez, Enrique (P) 9543085100	
Customer Contact Wilf, Raymond (P) (239) 590-4545 rgwilf@flylcpa.com	

Customer

Lee County Port Authority (8847)
 Wilf, Raymond
 11000 Terminal Access Rd Ste 8671
 Fort Myers, FL 339138213
 United States
 (P) 2395904541

Bill To

Lee County Port Authority
 11000 Terminal Access Rd Ste 8671
 Fort Myers, FL 339138213
 United States
 (P) 2395904541

Ship To

Lee County Port Authority
 11000 Terminal Access Rd Ste 8671
 Fort Myers, FL 339138213
 United States
 (P) 2395904541

Customer PO:	Terms: ACH / EFT Payment	Ship Via: Free Standard Shipping
Special Instructions:		Carrier Account #:

#	Description	Part #	Qty	Unit Price	Total
Contract: AR3227 / 43220000-NASPO-19-ACS					
1	Cisco Catalyst 9300 Network Essentials - switch - L3 - managed - 36 x 2.5GBase-T (UPOE) + 12 x 100/1000/2.5G/5G/10G (UPOE) - rack-mountable - UPOE (490 W)	C9300-48UXM-E	12	\$4,861.38	\$58,336.56
2	Cisco Config 1 Secondary Power Supply Power supply - hot-plug / redundant (plug-in module) - 80 PLUS Platinum - AC 115-240 V - 1100 Watt - for P/N: C9300-24H-10A, C9300-24H-10E, C9300-48UN-1E, C9300L-48UXG4X-CAP, C9300X-12Y-EDU	PWR-C1-1100WAC-P/2	12	\$685.46	\$8,225.52
3	Cisco StackWise 480 Stacking cable - 1.6 ft - for Catalyst 3850-24, 3850-48	STACK-T1-50CM	12	\$36.08	\$432.96
4	Cisco StackPower Power cable - 1 ft - for Catalyst 3750X-12, 3750X-24, 3750X-48	CAB-SPWR-30CM	12	\$34.27	\$411.24
5	Cisco Digital Network Architecture Essentials Term License (7 years) - 48 ports - for P/N: C9300-48H-E, C9300-48UB-E, C9300-48U-E, C9300-48UN-E, C9300-48UXM-E, C9300-DNA-E-48=	C9300-DNA-E-48-7Y	12	\$945.22	\$11,342.64
6	Cisco Catalyst 9300 Series Network Module Expansion module - 10 Gigabit SFP+ x 8 - for Catalyst 9300	C9300-NM-8X	12	\$919.95	\$11,039.40
7	Cisco Catalyst 9606R Switch - side to side airflow - rack-mountable	C9606R	2	\$4,675.56	\$9,351.12
8	Cisco Digital Network Architecture Advantage Term License (7 years) - for P/N: C9600-DNA-A=, C9606R, C9606R-48Y24C-BN-A	C9600-DNA-A-7Y	2	\$20,924.61	\$41,849.22
9	Cisco Supervisor Engine 1 Control processor - GigE - 1U - plug-in module - for P/N: C9606R, C9606R-10A, C9606R-1A, C9606R-48S-BN-A, C9606R-48Y24C-BN-A, C9606R-EDU	C9600-SUP-1	2	\$14,070.00	\$28,140.00
10	Cisco Solid state drive - 960 GB - for P/N: C9606R, C9606R-10A, C9606R-1A, C9606R-48S-BN-A, C9606R-48Y24C-BN-A, C9606R-EDU	C9K-F2-SSD-960GB	2	\$2,705.77	\$5,411.54
11	Cisco Supervisor Engine 1 Redundant Control processor - GigE - 1U - plug-in module - for P/N: C9606R, C9606R-10A, C9606R-1A, C9606R-48S-BN-A, C9606R-48Y24C-BN-A, C9606R-EDU	C9600-SUP-1/2	2	\$14,070.00	\$28,140.00

#	Description	Part #	Qty	Unit Price	Total
12	Cisco Solid state drive - 960 GB - for P/N: C9606R, C9606R-10A, C9606R-1A, C9606R-48S-BN-A, C9606R-48Y24C-BN-A, C9606R-EDU	C9K-F2-SSD-960GB	2	\$2,705.77	\$5,411.54
13	Cisco Catalyst 9600 Series Line Card Switch - 48 x 1/10/25 Gigabit SFP+ / SFP28 - plug-in module - for P/N: C9606R, C9606R-10A, C9606R-1A, C9606R-48S-BN-A, C9606R-48Y24C-BN-A, C9606R-EDU	C9600-LC-48YL	2	\$8,571.87	\$17,143.74
14	Cisco Catalyst 9600 Series Line Card Switch - 48 x 1/10/25 Gigabit SFP+ / SFP28 - plug-in module - for P/N: C9606R, C9606R-10A, C9606R-1A, C9606R-48S-BN-A, C9606R-48Y24C-BN-A, C9606R-EDU	C9600-LC-48YL	2	\$8,571.87	\$17,143.74
15	Cisco Catalyst 9600 Series Line Card Switch - 48 x 1/10/25 Gigabit SFP+ / SFP28 - plug-in module - for P/N: C9606R, C9606R-10A, C9606R-1A, C9606R-48S-BN-A, C9606R-48Y24C-BN-A, C9606R-EDU	C9600-LC-48YL	2	\$8,571.87	\$17,143.74
16	Cisco Catalyst 9600 Series Line Card Switch - 48 x 1/10/25 Gigabit SFP+ / SFP28 - plug-in module - for P/N: C9606R, C9606R-10A, C9606R-1A, C9606R-48S-BN-A, C9606R-48Y24C-BN-A, C9606R-EDU	C9600-LC-48YL	2	\$8,571.87	\$17,143.74
17	Cisco Power supply - hot-plug / redundant (plug-in module) - AC 90-140/180-264 V - 2000 Watt - for P/N: C9606R, C9606R-10A, C9606R-1A, C9606R-48S-BN-A, C9606R-48Y24C-BN-A, C9606R-EDU	C9600-PWR-2KWAC	8	\$1,082.30	\$8,658.40
18	Cisco UCS C240 M5 SFF Rack Server Server - rack-mountable - 2U - 2-way - no CPU - RAM 0 GB - SATA/SAS - hot-swap 2.5" bay(s) - no HDD - GigE, 10 GigE - monitor: none	UCSC-C240-M5SX	6	\$1,780.88	\$10,685.28
19	Cisco SMARTnet Extended service agreement - replacement - 8x5 - response time: NBD - for P/N: CSP-5444, CSP-5444=, CSP-5456, CSP-5456=, UCSC-C240-M5SX-RF, UCSC-C240-M5SX-WS	CON-SNT-C240M5SX	30	\$404.06	\$12,121.80
20	64GB DDR4-2933-MHz RDIMM/2Rx4/1.2v	UCS-MR-X64G2RT-H	36	\$1,600.73	\$57,626.28
21	Cisco Riser card - for UCS C240 M5, SmartPlay Select C240 M5L, SmartPlay Select C240 M5SX	UCSC-PCI-1-C240M5	6	\$71.79	\$430.74
22	Intel X710 Network adapter - PCIe 3.0 x8 low profile - 10 Gigabit SFP+ x 2 - for UCS C460 M4 Rack Server, C460 M4 Rack Server for SAP HANA Scale-Up	UCSC-PCIE-ID10GF	6	\$675.72	\$4,054.32
23	Emulex LightPulse LPe31002 Network adapter - 16Gb Fibre Channel x 2 - for UCS C220 M5, C240 M5, C240 M5L, SmartPlay Select C220 M5SX, SmartPlay Select C240 M5SX	UCSC-PCIE-BD16GF	12	\$1,708.60	\$20,503.20
24	Cisco Power supply - hot-plug / redundant (plug-in module) - AC 100-240 V - 1050 Watt - for UCS C220 M5SN, C240 M5, S3260, SmartPlay Select C220 M5SX, SmartPlay Select C3260	UCSC-PSU1-1050W	12	\$263.00	\$3,156.00
25	Cisco Ball Bearing Rail Kit Rack rail kit - for UCS C220 M4S, Smart Play C220 M4, SmartPlay Select C220 M4S, SmartPlay Select C220 M4SX	UCSC-RAILB-M4	6	\$79.36	\$476.16
26	Intel Xeon Gold 5218R 2.1 GHz - 20-core - 27.5 MB cache - for UCS C220 M5, C240 M5, C240 M5L, S3260 M5, SmartPlay Select B200 M5	UCS-CPU-I5218R	12	\$1,875.64	\$22,507.68
27	Cisco Storage controller (RAID) - SAS 12Gb/s - for UCS C240 M5, C480, SmartPlay Select C240 M5, SmartPlay Select C240 M5sx	UCSC-RAID-M5HD	6	\$1,129.92	\$6,779.52
28	Cisco Solid state drive - 240 GB - internal - M.2 - SATA - for UCS B200 M5, C125 M5, C480, SmartPlay Select B200 M5	UCS-M2-240GB	12	\$181.97	\$2,183.64
29	Cisco Storage controller (RAID) - M.2 Card / SATA 6Gb/s - RAID 1 - for UCS C220 M5, C220 M5SN, C220 M5SX, C240 M5, C240 M5L, C480, C480 M5	UCS-M2-HWRAID	6	\$107.50	\$645.00
30	Cisco Enterprise Value Solid state drive - 480 GB - hot-swap - 2.5" SFF - SATA 6Gb/s - for UCS C220 M5, C220 M5SX, C240 M5, C4200, C480, SmartPlay Select C240 M5SX	UCS-SD480GM1X-EV	12	\$442.54	\$5,310.48
31	Cisco Meraki MR56 Wireless access point - 802.11ac Wave 2 - Wi-Fi 6 - 2.4 GHz, 5 GHz - DC power - cloud-managed	MR56-HW	20	\$719.73	\$14,394.60
32	Cisco Meraki MR46E Wireless access point - 802.11ac Wave 2 - Wi-Fi 6 - 2.4 GHz, 5 GHz - cloud-managed	MR46E-HW	6	\$575.42	\$3,452.52

#	Description	Part #	Qty	Unit Price	Total
33	Cisco Meraki Narrow Patch Antenna - 11.2 dBi (for 2.4 GHz), 10.8 dBi (for 5 GHz) - directional - wall-mountable, pole mount, indoor - for Cisco Meraki MR53E	MA-ANT-3-F6	6	\$529.82	\$3,178.92
34	Cisco Meraki MR86 Wireless access point - 802.11ac Wave 2 - Wi-Fi 6 - 2.4 GHz, 5 GHz - cloud-managed	MR86-HW	2	\$883.88	\$1,767.76
35	CISCO MERAKI DUAL BAND SECTOR ANTENNA	MA-ANT-27	4	\$125.90	\$503.60
36	Cisco Meraki Enterprise Cloud Controller Subscription license (7 years) - hosted	LIC-ENT-7YR	28	\$226.94	\$6,354.32

Florida State Cisco NASPO Contract # NVP #AR3227
Participating Addendum for FL #43220000-NASPO-19-ACS
Contract Start Date: 06/09/2021
Contract End Date: 09/30/2024

Subtotal: \$461,456.92
Tax (.0000%): \$0.00
Shipping: \$0.00
Misc: \$0.00
Total: \$461,456.92

United Data Technologies's (UDT) quotation sale, and/or acceptance of Client's purchase order for UDT's Products and/or Services is expressly conditioned upon Client's acknowledgment and acceptance to UDT's Terms and Conditions and, if applicable, any End User Licensing Agreement. Customer's acceptance of UDT's Products and/or Services is also deemed by the Parties to be Customer's acknowledgment and acceptance of such terms. 📌📌

Notwithstanding the foregoing, these Terms and Conditions shall be superseded by the terms and conditions in any Services Agreement executed between Client and UDT for the Products and Services offered in this Quote.

The client may accept to purchase the Products listed in this Quote by Client's Purchase Order or by signing and returning a copy of this Quote to UDT. The client's acceptance of any of UDT's services requires a written Service Agreement to be executed between the Client and UDT.

CLIENT HEREBY ACCEPTS TO PURCHASE THE PRODUCTS LISTED IN THIS QUOTE AND AGREES TO BE BOUND TO THE TERMS AND CONDITIONS INCLUDED HEREIN.

Client

Name: _____

Title: _____ 📌

Signature: _____

Date: _____ 📌📌



BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board (1) approve the use of Contract 081419CDW to purchase Technology Catalog Solutions from CDW-G Government, LLC. through a Sourcewell cooperative agreement and (2) Request Board authorize the Executive Director to exercise the optional one year renewal at the same terms and conditions as the initial contract.
2. **FUNDING SOURCE:** General Airport operating revenues collected during the normal operations of the Airport, account string VF5132541200.503460 Information Technology.
3. **TERM:** From execution of agreement until 10/30/2023 with an optional one-year (1) renewal
4. **WHAT ACTION ACCOMPLISHES:** Provides the Authority the ability to secure minor technology hardware, software, supplies and accessories on an as-needed basis at discounted pricing to ensure technology needs for the Southwest Florida International Airport and Page Field are met. The agreement is for an initial two (2) year term until 10/30/2023 for a not to exceed amount of \$500,000 with an option to extend up to one (1) additional year for a not to exceed amount of \$250,000.

5. **CATEGORY:** 22.
Administrative Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
 CONSENT
 ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Brian McGonagle

DIV. Administration

10. **BACKGROUND:**

The Information Technology Department provides and maintains computers and associated peripherals and accessories for the Lee County Port Authority in order to ensure reliable technology for use by the administrative offices, as well as for the common use passenger processing and flight information display systems.

The Authority routinely purchases computer equipment, peripherals, accessories and repair parts to ensure proper functioning and maintenance of the Authority's technology equipment and systems. The inventory of computers and equipment continues to grow and equipment prices steadily increase. Therefore, in order to effectively and efficiently meet day-to-day operational requirements, the Authority requires an agreement it can access on-demand to fulfill basic requirements as needed in a cost-effective and time-efficient manner.

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<i>Benjamin R. Siegel</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)

The Authority recommends leveraging an agreement set in place as a result of competitive pricing solicited by Sourcewell, a governmental agency and service cooperative organized for the purpose of assisting public agencies in meeting needs efficiently.

There are several advantages to utilizing the Sourcewell agreement.

- informed buying decisions through analytical data will be made to access excellent pricing in a wide variety of technology categories
- the entire CDW-G catalog is available through this agreement enabling the Authority to locate the right equipment from multiple manufacturers
- may alleviate some of the challenges associated with supply chain shortages
- the Authority saves administrative costs from not having to conduct its own solicitation

The agreements will be effective upon execution by the Board and will continue until 10/30/2023 with an option to renew for one additional year at the discretion of the Authority and the Executive Director.

Attachments:

Signed CP 21-98NJD CDW-G (Sourcewell) - Execution of Contract Letter

Piggyback Agreement - CDW-G (Sourcewell)

Signed Written Notice of Determination - CDW-G (Sourcewell).rev

LEE COUNTY PORT AUTHORITY

UTILIZATION OF OTHER COMPETITIVELY PROCURED CONTRACTS

<p>Date: <u>09/28/2021</u></p> <p>Vendor: <u>CDW Government LLC</u></p> <p>Description: <u>Technology Catalog Solutions</u></p> <p>Term: <u>Effective date – 10/30/2023</u></p> <p>Renewal Term: <u>One (1), one-year (1) option</u></p> <p>Procurement Agent: <u>Nick Diaz</u></p> <p>Contract #: <u>Sourcewell 081419-CDW</u></p>	<p>Board Approval Req'd: <input checked="" type="checkbox"/> Yes / No <input type="checkbox"/></p> <p>Lead Agency: <u>Sourcewell</u></p> <p>Posting Req'd: <input type="checkbox"/> Yes / No <input checked="" type="checkbox"/></p> <p><input type="checkbox"/> Single Purchase –Total Cost : _____</p> <p><input checked="" type="checkbox"/> Estimated Purchase - Per BoPC Approval Est'd Annual cost: <u>11.4.2021</u></p> <p>Cost (this purchase): _____</p> <p>Balance: _____</p>
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NOTICE OF WRITTEN DETERMINATION

A contract may be awarded for a commodity or service when the Purchasing Manager determines that utilizing the contract is authorized and in the Authority's best interest based on the following findings.

Product/Service being requested:

Hardware, Software, Peripherals, Professional Services, Cloud, Technology Solutions and Accessories

The contract has been evaluated and found to be appropriate because:

- Cooperative or Piggyback.
- Competitive requirements have been met.
- Conforms to all applicable laws and best practices.
- Specs, price, terms and conditions produce best value.
- The lead agency has been contacted and has verified eligibility.
- There are no known vendor performance or contract compliance issues.
- The vendor is appropriately insured and licensed to do business in the State of Florida.
- The term of the agreement to be piggybacked: 12/01/2019 – 10/30/2023.
- Renew Terms One (1) additional, one-year (1) renewal option
- Other. LCPA Purchasing Manual Section 5.3 (B)

The advantages of utilizing this method of procurement include:

Cost Savings. The Authority will be able to enjoy competitive pricing solicited by Sourcewell, a governmental agency organized for the purpose of assisting public agencies in meeting needs more efficiently. Utilization of this agreement allows the Authority to leverage the benefits of obtaining excellent pricing. Additionally, the Authority saves administrative costs from not having to conduct its own solicitation.

- Improved terms. Explain: _____
- Other. Explain: _____

LEE COUNTY PORT AUTHORITY

UTILIZATION OF OTHER COMPETITIVELY PROCURED CONTRACTS

DocuSigned by:

Approved by:  Date: 9/30/2021
FA068A68127C4A5
Melissa M. Wendel, Procurement Manager, CPPO, NIGP-CPP

Estimated Spend Reconciliation (only required to be completed for Estimated Award Approvals)

<u>Date</u>	<u>Spend Balance</u>	<u>Purchase Amount</u>	<u>Remaining Balance</u>	<u>REQ Number</u>	<u>PO Number</u>	<u>Description of Purchase</u>	<u>Branch Plant</u>

Contract Number 9209
Vendor Number 104098

LEE COUNTY PORT AUTHORITY
TECHNOLOGY CATALOG SOLUTIONS
AGREEMENT

This Agreement ("Agreement") is entered this ____ day of _____, 2021, 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 CDW GOVERNMENT LLC, an Illinois corporation, authorized to do business in the State of Florida, ("Provider"), at 230 N. Milwaukee Ave., Vernon Hills, Illinois, 60061, Federal Identification Number 36-4230110.

WITNESSETH

WHEREAS, Authority desires to obtain goods and services from Provider for the procurement of Technology Catalog Solutions (Hardware, Software, Peripherals, Professional Services, Cloud, Technology Solutions and Accessories) to meet the needs of the Authority in Fort Myers, Florida; and,

WHEREAS, Provider has entered into an agreement between Provider and Sourcewell ("Source Contractor") pursuant to competitive solicitation RFP 081419, ("Source Agreement") to provide similar goods and services to those required by the Authority; and,

WHEREAS, both Provider and Source Contractor have agreed that the terms and pricing of the Source Agreement may be utilized by other local governments to obtain similar goods and services; and,

WHEREAS, 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, Provider has reviewed the goods and services required under this Agreement and has agreed to provide the requested goods and services, and states that it is qualified, willing and able to provide all such goods and services according to the provisions, conditions and terms below and in accord with all governing federal, state and local laws and regulations.

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 WORK

Provider hereby agrees to provide the goods and services set out in Exhibit A, attached hereto and made a part of this Agreement.

3.0 SOURCE AGREEMENT - INCORPORATION BY REFERENCE

It is the intent of the parties to allow Authority to "piggyback" the Source Agreement, attached as Exhibit B, as permitted by that Agreement and the Authority Purchasing Manual. The terms of the Source Agreement are hereby merged into and incorporated by reference as part of this Agreement. If there are any conflicts between the terms of the Source Agreement and this Agreement and Exhibit(s), the terms of this Agreement will control.

4.0 TERM OF AGREEMENT

The term of this Agreement begins on the first date written above ("Effective Date") and will continue for the duration of the Source Agreement, including renewals or extensions thereof.

5.0 COMPENSATION

Authority will pay for all requested and authorized goods provided or services completed in accordance with the requirements, provisions, and/or terms of this Agreement based on the price list set forth in Exhibit C, attached hereto and made a part of this Agreement.

6.0 EXCEPTIONS

Exceptions to the Source Agreement, if any, are specifically amended as set forth in Exhibit D, attached hereto and made a part of this Agreement.

7.0 NOTICES AND ADDRESS

All notices required and/or made pursuant to this Agreement will be in writing and will be given by the United States Postal Service, to the following addresses of record:

If to the Authority:
LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Attention: Airport Executive Director

If to the Provider:

CDW GOVERNMENT LLC
230 N. Milwaukee Avenue
Vernon Hills, IL 60061
Attention: Senior Manager, Program Management

8.0 ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties in the space provided.

[Remainder of Page Intentionally Left Blank]

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

ATTEST: LINDA DOGGETT
Clerk of the Circuit Court

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair or Vice Chair

Approved as to Form for the Reliance
of Lee County Port Authority Only:

By: _____
Port Authority Attorney's Office

Signed, Sealed and Delivered

CDW GOVERNMENT LLC

Carmen Castro



Witness

Authorized Signature for Provider

Carmen Castro

Witness

By: Dario Bertocchi

Printed Name

SEAL

Director, Program Sales
Title

Exhibit A Scope of Work

II. EQUIPMENT, PRODUCTS, AND SERVICES

A. SOLUTIONS-BASED SOLICITATION

This RFP and contract award process is a solutions-based solicitation; meaning that Sourcewell is seeking equipment, products, or services that meet the general requirements of the scope of this RFP and that are commonly desired or are required by law or industry standards.

B. REQUESTED EQUIPMENT, PRODUCTS, OR SERVICES

It is expected that Proposers offer a wide array of equipment, products, or services at lower prices and with better value than what they would ordinarily offer to a single government entity, a school district, or a regional cooperative.

1. Sourcewell is seeking proposals for Technology Catalog Solutions, to include a complete electronic catalog system permitting Sourcewell and Sourcewell Members to make web-based purchases, and receive delivery of:
 - a. Computer hardware, including desktops, laptops, tablets, and related devices;
 - b. Networking, server, and data storage equipment, including servers, server appliances, racks and cabinets, data storage or data protection devices, and switching technology;
 - c. Peripherals, accessories, components, and options, including printers, scanners, monitors, AV equipment, unified communication hardware, mobility hardware, cabling, modems, routers, switches, power management, and supplies;
 - d. Software related to the purchase of the equipment described in subparts a – c above; and,
 - e. Tech support or assessment services related to the purchase of the equipment or software described in subparts a – d above.

The catalog must be designed to populate with the Sourcewell and Sourcewell Member pricing offered by Proposer. To the extent that Proposer has retail store locations, the system must be capable of providing Sourcewell and Sourcewell Member pricing for purchases at Proposer's retail store locations.

The primary focus of this solicitation is on the offering of a technology catalog, but alternate forms of transaction (e.g., PO and invoice transactions) are a permissible ancillary service method.

2. This solicitation should NOT be construed to include "services only", or "consulting only" solutions. This solicitation does not include those equipment, products, or services covered under categories included in contracts currently maintained by Sourcewell:

a. RFP#020817 Managed Service Provider (MSP) for Information Technology and I.T. Staff Augmentation

Proposers may include related equipment, accessories, and services to the extent that these solutions are complementary to the equipment, products, or services being proposed.

Generally, the solutions for Sourcewell Members are turn-key solutions, providing a combination of equipment, products and services, delivery, and installation to a properly operating status. However, equipment or products only solutions may be appropriate for situations where Sourcewell Members possess the ability, either in-house or through local third-party contractors, to properly install and bring to operation those equipment/products being proposed.

Sourcewell prefers vendors that provide a sole source of responsibility for the products and services provided under a resulting contract. If Proposer requires the use of dealers, resellers, or subcontractors to provide the products or services, the Proposal should address how the products or services will be provided to Members and describe the network of dealers, resellers, and/or subcontractors that will be available to serve Sourcewell Members under a resulting contract.

Sourcewell desires the broadest possible selection of products/equipment and services being proposed over the largest possible geographic area and to the largest possible cross-section of Sourcewell current and potential Members.

C. REQUIREMENTS

It is expected that Proposers have knowledge of all applicable industry standards, laws, and regulations and possess an ability to market and distribute the equipment, products, or services to Members.

1. Safety Requirements. All items proposed must comply with current applicable safety or regulatory standards or codes.
2. Deviation from Industry Standard. Deviations from industry standards must be identified with an explanation of how the equipment, products, and services will provide equivalent function, coverage, performance, and/or related services.
3. New Equipment and Products. Proposed equipment and products must be for new, current model; however, Proposer may offer certain close-out equipment or products if it is specifically noted in the Pricing proposal.
4. Delivered and operational. Unless clearly noted in the Proposal, equipment and products must be delivered to the Member as operational.
5. Warranty. All equipment, products, supplies, and services must be covered by a warranty that is the industry standard or better.

D. ANTICIPATED CONTRACT TERM

Sourcewell anticipates that the term of any resulting contract(s) will be four (4) years. An extension may be offered based on the best interests of Sourcewell and its members.

E. ESTIMATED CONTRACT VALUE AND USAGE

Based on past volume of similar contracts, the estimated annual value of all transactions from contracts resulting from this RFP are anticipated to be USD \$600 Million; therefore, proposers are expected to propose volume pricing. Sourcewell anticipates considerable activity under the contract(s) awarded from this RFP; however, sales and sales volume from any resulting contract are not guaranteed.

F. MARKETING PLAN

Proposer's sales force will be the primary source of communication with Members. The Proposer's Marketing Plan should demonstrate Proposer's ability to deploy a sales force or dealer network to Members, as well as Proposer's sales and service capabilities. It is expected that Proposer will promote and market any contract award.

G. ADDITIONAL CONSIDERATIONS

1. Contracts will be awarded to Proposers able to best meet the need of Members. Proposers should submit their complete line of equipment, products, or services that are applicable to the scope of this RFP.
2. Proposers should include all relevant information in its proposal. Sourcewell cannot consider information that is not provided in the Proposal. Sourcewell reserves the right to verify Proposer's information and may request clarification from a Proposer, including samples of the proposed equipment or products.
3. Depending upon the responses received in a given category, Sourcewell may need to organize responses into subcategories in order to provide the broadest coverage of the requested equipment, products, or services to Members. Awards may be based on a subcategory.
4. A Proposer's documented negative past performance with Sourcewell or its Members occurring under a previously awarded Sourcewell contract may be considered in the evaluation of a proposal.

Exhibit B
Source Agreement

081419-CDW



Solicitation Number: RFP#081419

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and **CDW Government LLC**, 230 N. Milwaukee Ave., Vernon Hills, IL 60061 (Vendor).

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to its members. Participation is open to all levels of governmental entity, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada.

Vendor desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and its Members (Members).

1. TERM OF CONTRACT

A. **EFFECTIVE DATE.** This Contract is effective December 1, 2019, or upon the date of last signature, whichever is later.

B. **EXPIRATION DATE AND EXTENSION.** This Contract expires October 30, 2023, unless it is cancelled sooner pursuant to Article 24. This Contract may be extended up to one additional one-year period upon request of Sourcewell and with written agreement by Vendor.

C. **SURVIVAL OF TERMS.** Articles 11 through 16 survive the expiration or cancellation of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

A. **EQUIPMENT, PRODUCTS, OR SERVICES.** Vendor will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Vendor's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new/current model. Vendor may offer close-out or refurbished Equipment or Products if they are clearly indicated in

Vendor's product and pricing list. Unless agreed to by the Member in advance, Equipment or Products must be delivered as operational to the Member's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. **LAWS AND REGULATIONS.** All Equipment, Products, or Services must comply fully with applicable federal laws and regulations, and with the laws of the state or province in which the Equipment, Products, or Services are sold.

C. **WARRANTY.**

1. *Product Warranty:* Sourcewell and its Members understand that Vendor is not the manufacturer of the Products purchased by Sourcewell or its Members hereunder and that the only warranties offered are those of the manufacturer not Vendor or its Affiliates. In purchasing the Products Sourcewell and its Members rely on the manufacturer's specifications only and not on any statements or images that may be provided by Vendor or its Affiliates. VENDOR HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED RELATED TO PRODUCTS INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF TITLE ACCURACY MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WARRANTY OF NON-INFRINGEMENT OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY.

2. *Services Warranty:* Vendor warrants that the Services will be performed in a good and workmanlike manner. Members' sole and exclusive remedy with respect to this warranty will be at the sole option of Vendor to either (a) use its reasonable commercial efforts to reperform any Services not in substantial compliance with this warranty or (b) refund amounts paid by the Member related to the portion of the Services not in substantial compliance; provided in each case Member notifies Vendor in writing within thirty (30) business days after performance of the applicable Services. This warranty is voided if the Services are altered by anyone other than Vendor or any of its affiliates or its or their personnel.

3. *Cloud Warranty:* Sourcewell and its Members acknowledge that Vendor is not the provider of the Cloud Services purchased hereunder and the only warranties offered are those of the Cloud Service Provider not Vendor. In purchasing the Cloud Services Sourcewell and its Members rely only on the Cloud Service Provider's service descriptions and the terms and conditions set forth in the Cloud Services Terms and Conditions (defined below). Sourcewell and its Members further acknowledge and agree that Vendor makes no representations warranties or assurances that the Cloud Services are designed for or suitable for use in any high risk environment including but not limited to aircraft or automobile safety devices or navigation life support systems or medical devices nuclear facilities or weapon systems. Sourcewell and its Members further agree to review and comply with the Cloud Service Provider's disclaimers and restrictions if any regarding the use of the Cloud Services in high risk environments.

VENDOR DOES NOT WARRANT THAT THE CLOUD SERVICES WILL BE TIMELY UNINTERRUPTED OR ERROR FREE OR THAT THE CLOUD SERVICES WILL MEET SOURCEWELL OR MEMBER'S REQUIREMENTS. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS

WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE TERMS OF THIS PARAGRAPH DO NOT AFFECT THE TERMS OF ANY WARRANTIES FROM THE CLOUD SERVICES PROVIDER. SOURCEWELL AND ITS MEMBERS ACKNOWLEDGE THAT NO REPRESENTATIVE OF VENDOR IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY THAT IS NOT IN THIS AGREEMENT.

D. DEALERS AND DISTRIBUTORS. Upon Contract execution, Vendor will make available to Sourcewell a means to validate or authenticate Vendor's authorized Distributors/Dealers relative to the Equipment, Products, and Services related to this Contract. This list may be updated from time-to-time and is incorporated into this Contract by reference. It is the Vendor's responsibility to ensure Sourcewell receives the most current version of this list.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced as stated in Vendor's Proposal.

Regardless of the payment method chosen by the Member, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Member at the time of purchase.

When providing pricing quotes to Members, all pricing quoted must reflect a Member's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Member's requested delivery location.

A. SHIPPING AND SHIPPING COSTS. All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Vendor must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Members in accordance with Vendor's Return Policy, which is available from the Vendor upon request. Members reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery.

Vendor must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Vendor in breach of this Contract if the Vendor intentionally delivers substandard or inferior Equipment or Products. In the event of the delivery of nonconforming Equipment and Products, the Member will notify the Vendor as soon as possible and the Vendor will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Member.

B. **SALES TAX.** Each Member is responsible for supplying the Vendor with valid tax-exemption certification(s). When ordering, Members must indicate if it is a tax-exempt entity.

C. **HOT LIST PRICING.** At any time during this Contract, Vendor may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Vendor determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Members.

4. PRODUCT AND PRICING CHANGE REQUESTS

Vendor may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Contract Administrator. This form is available from the assigned Sourcewell Contract Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number
- Clearly specify the requested change
- Provide sufficient detail to justify the requested change
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change)
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Request Form will become an amendment to this Contract and be incorporated by reference.

5. MEMBERSHIP, CONTRACT ACCESS, AND MEMBER REQUIREMENTS

A. **MEMBERSHIP.** Membership in Sourcewell is open to public and nonprofit entities across the United States and Canada; such as municipal, state/province, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Members that can legally access the Equipment, Products, or Services under this Contract. A Member's authority to access this

Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Vendor understands that a Member's use of this Contract is at the Member's sole convenience and Members reserve the right to obtain like Equipment, Products, or Services from any other source.

Vendor is responsible for familiarizing its sales and service forces with Sourcewell membership requirements and documentation and will encourage potential members to join Sourcewell. Sourcewell reserves the right to add and remove Members to its roster during the term of this Contract.

B. **PUBLIC FACILITIES.** Vendor's employees may be required to perform work at government-owned facilities, including schools. Vendor's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Member policies and procedures, and all applicable laws.

6. MEMBER ORDERING AND PURCHASE ORDERS

A. **PURCHASE ORDERS AND PAYMENT.** To access the contracted Equipment, Products, or Services under this Contract, Member must clearly indicate to Vendor that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Vendor. Typically a Member will issue a purchase order directly to Vendor. Members may use their own forms for purchase orders, but it should clearly note the applicable Sourcewell contract number. Members will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Member.

B. **ADDITIONAL TERMS AND CONDITIONS.** Additional terms and conditions to a purchase order may be negotiated between a Member and Vendor, such as job or industry-specific requirements, legal requirements (such as affirmative action or immigration status requirements), or specific local policy requirements. Any negotiated additional commercial terms and conditions must never be less favorable to the Member than what is contained in Vendor's Proposal.

C. **PERFORMANCE BOND.** If requested by a Member, Vendor will provide a performance bond that meets the requirements set forth in the Member's purchase order.

D. **SPECIALIZED SERVICE REQUIREMENTS.** In the event that the Member requires service or specialized performance requirements (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements) not addressed in this Contract, the Member and the Vendor may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

E. **TERMINATION OF PURCHASE ORDERS.** Members may terminate a purchase order, in whole or in part, immediately upon notice to Vendor in the event of any of the following events:

1. The Member fails to receive funding or appropriation from its governing body at levels sufficient to pay for the goods to be purchased;
2. Federal or state laws or regulations prohibit the purchase or change the Member's requirements; or
3. Vendor commits any material breach of this Contract or the additional terms agreed to between the Vendor and a Member.

F. **GOVERNING LAW AND VENUE.** The governing law and venue for any action related to a Member's purchase order will be determined by the Member making the purchase.

7. CUSTOMER SERVICE

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Vendor will assign an Account Representative to Sourcwell for this Contract and must provide prompt notice to Sourcwell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcwell and Member inquiries; and
- Business reviews to Sourcwell and Members, if applicable.

B. **BUSINESS REVIEWS.** Vendor must perform a minimum of one business review with Sourcwell per contract year. The business review will cover sales to members, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. **CONTRACT SALES ACTIVITY REPORT.** Each calendar quarter, Vendor must provide a contract sales activity report (Report) to the Sourcwell Contract Administrator assigned to this Contract. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Vendor must submit a report indicating no sales were made).

The Report must contain the following fields:

- Customer Name (e.g., City of Staples Highway Department);
- Customer Physical Street Address;
- Customer City;
- Customer State;
- Customer Zip Code;

- Customer Contact Name;
- Customer Contact Email Address;
- Customer Contact Telephone Number;
- Sourcewell Assigned Entity/Member Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Vendor.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Vendor will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Members. The Vendor will submit a check payable to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Members under this Contract during each calendar quarter. Payments should note the Sourcewell-assigned contract number in the memo and must be mailed to the address above "Attn: Accounts Receivable." Payments must be received no later than forty-five (45) calendar days after the end of each calendar quarter.

Vendor agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Vendor is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than thirty (30) days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Vendor's Authorized Representative is the person named in the Vendor's Proposal. If Vendor's Authorized Representative changes at any time during this Contract, Vendor must promptly notify Sourcewell in writing.

10. ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. ASSIGNMENT. Neither the Vendor nor Sourcewell may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed assignment agreement. Such consent will not be unreasonably withheld.

B. AMENDMENTS. Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.

C. **WAIVER.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or the right to enforce it.

D. **CONTRACT COMPLETE.** This Contract contains all negotiations and agreements between Sourcewell and Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

E. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, master-servant, principal-agent, or any other relationship.

11. LIABILITY

Vendor must indemnify save and hold Sourcewell and its Members including their agents and employees harmless from any third party claims or causes of action including reasonable attorneys' fees arising out of the performance of this Contract by the Vendor or its agents or employees which results in injury or death to person(s) or tangible personal property alleged to have been caused by some defect in the Services under this Contract to the extent the Service has been used according to its specifications.

Vendor shall pass through all indemnity protections provided by the Equipment and/or Product manufacturer to the extent intended for the end user of such Equipment and/or Products. UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN WILL EITHER PARTY ITS AFFILIATES OR ITS OR THEIR SUPPLIERS SUBCONTRACTORS OR AGENTS BE LIABLE FOR ANY INCIDENTAL INDIRECT SPECIAL PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS BUSINESS REVENUES OR SAVINGS AND LOSS DAMAGE OR CORRUPTION OF DATA OR SOFTWARE EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE.

12. AUDITS

No more than one (1) time per twelve (12) month period during the term of this Contract, upon thirty (30) days advance written notice, Sourcewell reserves the right to review the books, records, documents, and accounting procedures and practices of the Vendor relevant to this Contract to verify the amounts paid hereunder. Such rights shall extend for a minimum of six (6) years from the end of this Contract. This clause extends to Members as it relates to business conducted by that Member under this Contract.

under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, any additional costs incurred by Sourcewell and/or its Members as a result of such failure to proceed will be borne by the Vendor.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Member order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

Written notice of default and a reasonable opportunity to cure must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

20. INSURANCE

A. **REQUIREMENTS.** At its own expense, Vendor must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Vendor will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition). At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

- \$1,000,000 each occurrence Bodily Injury and Property Damage
- \$1,000,000 Personal and Advertising Injury
- \$2,000,000 aggregate for Products-Completed operations
- \$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Vendor will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer).

Minimum Limits:

- \$1,000,000 each accident, combined single limit

4. *Umbrella Insurance.* During the term of this Contract, Vendor will maintain umbrella coverage over Workers' Compensation, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

- \$2,000,000

5. *Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability.* During the term of this Contract, Vendor will maintain coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Vendor's professional services required under this Contract.

Minimum Limits:

- \$2,000,000 per claim or event
- \$2,000,000 – annual aggregate

6. *Network Security and Privacy Liability Insurance.* During the term of this Contract, Vendor will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

- \$2,000,000 per occurrence
- \$2,000,000 annual aggregate

Failure of Vendor to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. **CERTIFICATES OF INSURANCE.** Prior to commencing under this Contract, Vendor must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates will be emailed to the Sourcewell Contract Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf. All policies must include there will be no cancellation, suspension, non-renewal, or reduction of coverage without prior written notice to the Vendor.

Upon request, Vendor must provide to Sourcewell copies of certificates of insurance, within ten (10) days of a request. Failure to request certificates of insurance by Sourcewell, or failure of Vendor to provide certificates of insurance, in no way limits or relieves Vendor of its duties and responsibilities in this Contract.

C. **ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE.** Vendor agrees to include Sourcewell and its Members, including their officers, agents, and employees, as an additional insured under the Vendor's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Vendor, and products and completed operations of Vendor. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Vendor waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Vendor or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Vendor or its subcontractors. Where permitted by law, Vendor must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies).

F. **SELF-INSURED RETENTIONS.** Any self-insured retention in excess of \$10,000 is subject to Sourcewell's approval.

21. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Vendor must maintain a valid status on all required federal, state, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with Sourcewell and Members.

22. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Vendor certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Vendor declares bankruptcy, Vendor must immediately notify Sourcewell in writing.

Vendor certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any Member. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Vendor further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

23. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Members that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Members may also require additional requirements based on specific funding specifications. Within this Article, all references to "federal" should be interpreted to mean the United States federal government. The following list only applies when a Member accesses Vendor's Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. § 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5,

“Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Vendor must be in compliance with all applicable Davis-Bacon Act provisions.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. § 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Vendor certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Vendor

certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Vendor must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Vendor certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Vendors must file any required certifications. Vendors must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Vendors must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Vendors must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Vendor must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Vendor further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of three (3) years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Vendor must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. **BUY AMERICAN PROVISIONS COMPLIANCE.** To the extent applicable, Vendor must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. **ACCESS TO RECORDS (2 C.F.R. § 200.336).** Vendor agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

L. **PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322).** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

24. CANCELLATION

Sourcewell or Vendor may cancel this Contract at any time, with or without cause, upon sixty (60) days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Vendor's Proposal. Termination of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to termination.

25. THIRD PARTY CLOUD SERVICES

"Personal Data" means data which relate to a living individual who can be identified (a) from that data or (b) from that data and other information which is in the possession of or is likely to come into the possession of the controller and includes any expression of opinion about the individual and any indication of the intentions of the controller or any other person in respect of the individual.

Cloud Services. It is acknowledged that Sourcewell and its Members are receiving the Cloud Services directly from the Cloud Service Provider pursuant to the Cloud Service Provider's standard terms and conditions, or such other terms as agreed upon by Sourcewell and its

Members and the Cloud Service Provider ("Cloud Services Terms and Conditions"). Accordingly, it shall consider the Cloud Service Provider to be the contracting party and the Cloud Service Provider shall be the party responsible for providing the Cloud Services to Sourcewell and its Members and shall look solely to the Cloud Service Provider for any loss claims or damages arising from or related to the provision of such Cloud Services.

Sourcewell and its Members shall be solely responsible for daily back-up and other protection of its data and software against loss damage or corruption. Sourcewell and its Members shall be solely responsible for reconstructing data (including but not limited to data located on disk files and memories) and software that may be lost damaged or corrupted during the performance of Cloud Services. VENDOR AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS, AND AGENTS ARE HEREBY RELEASED AND SHALL CONTINUE TO BE RELEASED FROM ALL LIABILITY IN CONNECTION WITH THE LOSS, DAMAGE, OR CORRUPTION OF DATA AND SOFTWARE AND SOURCEWELL AND ITS MEMBERS ASSUME ALL RISK OF LOSS, DAMAGE, OR CORRUPTION OF DATA AND SOFTWARE IN ANY WAY RELATED TO OR RESULTING FROM THE CLOUD SERVICES.

Sourcewell

DocuSigned by:
By: Jeremy Schwartz
C0FD2A139D06489...
Jeremy Schwartz
Title: Director of Operations & Procurement/CPO
Date: 11/9/2019 | 5:53 AM CST

CDW Government LLC

DocuSigned by:
By: Robert F. Kirby
7BE3F6B21781400...
Robert F. Kirby
Title: President
Date: 11/21/2019 | 3:07 PM CST

Approved:
DocuSigned by:
By: Chad Coauette
7E42BBF817AB4CC...
Chad Coauette
Title: Executive Director/CEO
Date: 11/8/2019 | 3:33 PM CST

RFP#081419 - Technology Catalog Solutions

Vendor Details

Company Name: CDW Government LLC
Address: 230 N. Milwaukee Ave
Vernon Hills, IL 60061
Contact: John Moss
Email: johnmos@cdw.com
Phone: 312-547-2453
HST#: 36-4230110

Submission Details

Created On: Thursday June 27, 2019 08:11:44
Submitted On: Tuesday August 13, 2019 13:11:20
Submitted By: John Moss
Email: johnmos@cdw.com
Transaction #: 3bee9b55-c457-4fdb-b721-f488e24ba2bb
Submitter's IP Address: 165.225.57.75

Specifications

Proposer Identity & Authorized Representatives

Line Item	Question	Response *
1	Proposer Legal Name (and applicable d/b/a, if any):	CDW Government LLC
2	Proposer Address:	230 N. Milwaukee Ave. Vernon Hills, IL 60061
3	Proposer website address:	www.cdwg.com
4	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer):	Name: Robert F. Kirby Title: President, CDW Government LLC Address: 75 Tri-State International Lincolnshire, IL 60069 Email Address: bobkir@cdwg.com Phone: 847.968.9898
5	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Name: John Moss Title: Proposal Specialist Address: 120 S. Riverside Plaza Chicago, IL 60625 Email Address: johnmos@cdwg.com Phone: 312.547.2453
6	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Name: Mark Ellis Title: Manager, Program Management Address: 74 Reading Ave, Hillsdale, MI 49242 Email Address: markeli@cdwg.com Phone: 732.982.0390

Company Information and Financial Strength

Line Item	Question	Response *
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7	<p>Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.</p> <p>An influential Walker survey once predicted that by 2020 customer experience will overtake price as the key differentiator for organizations. At CDW, we've always felt that to be true. From our earliest days as a classified ad for a 512K memory personal computer in the back of the newspaper in search of a customer (yes, we date all the way back to 1984, when classified ads in the newspaper were a thing) to the supplier today of integrated IT solutions for our 250,000 Schools, the U.S. Census Bureau to Bemidji Area Schools.</p> <p>Everything we do revolves around meeting the needs of our customers. It's tied into our core values, our business philosophy, our industry longevity, our culture, everything. It's always been that way and it will always be that way. From our front-line sales to backbone support, what brings us together as a company of 9,400 coworkers is our focus on our customers and the CDW Experience they receive no matter their size or location.</p> <p>For any who aren't familiar with us, what's the CDW Experience? No, it's not a musical act featuring mop top haircuts and matching suits, though you might say it involves a kind of harmony.</p> <ul style="list-style-type: none"> - It's first listening to our customers to find out what they need, what they want, and what they wish could be, rather than merely overwhelming them with our technology catalog of 100,000 products. - It's removing barriers to efficient procurement so that our customers can select technology solutions online or by phone at a price they can afford. - It's being a true trusted advisor to our customers, making them aware not only of available technology but of technology roadmaps so they can make the most informed purchases, or non-purchases as the case may be, to maximize investment at every critical decision point in the IT lifecycle. - It's offering our customers stability and security through rigorous quality control standards, such as our five ISO certifications, in procuring and delivering their IT investments to ensure their investment arrives on time, is what they ordered, and works. - It's installing and managing our customers' solution with certified technical and solution experts, either using in-house professionals with more than 6,700 technical certifications or a Trusted Partner Network of more than 1,200 partners of various size, demographic and geography. - It's responding to our customers' requests for support and management after we've already made the sale, ensuring their purchases work for them and meet all applicable standards, verifiable through custom reporting. - It's meeting our customers' demands for diversity, equality, and environmental responsibility in the supply chain by partnering with small, local, and diverse businesses, contributing to overall diverse spend in 2018 exceeding \$2B. <p>From our founding to now, we've been offering the latest technology and technology solutions, keeping pace with trends every step of the way so that our customers don't have to. In the 80s it was PCs, VCRs, painter pants, and Miami Vice, and today it's integrated IT solutions, cloud technology, eSports, and avocado toast.</p> <p>But none of this would be possible without our incredible coworkers.</p> <p>The way we make it great for our customers is by making it great for our coworkers. Meaning, the reason we can commit ourselves so thoroughly to our customers is because of the culture we've built at CDW that sustains us, and the relationships we form that constantly uplift us, motivating us to try harder in delivering the CDW Experience. We empower our coworkers to be everyday bold in their careers through many programs and initiatives. Here's a select group:</p> <p>Commitment to Diversity</p> <p>CDW understands the importance of recruiting and retaining a diverse internal workforce. It starts at the top. On January 1, 2019, Christine Leahy, formerly CDW's Chief Revenue Officer and with the company since 2002, succeeded Thomas Richards as CEO, making her one of the fewer than 10% of all female Fortune 500 CEOs.</p> <p>We enable all of our coworkers to make solid, dependable connections in the workplace, with our customers, our supplier partners, and in the communities we serve. We encourage coworkers to take an active role in their own personal and professional development through our many mentoring, technical, and professional development groups, including African Heritage Network, Hispanic Organization for Leadership and Achievement, Women's Opportunity Network, Alliance for Business Leading Equality, and Military & Allies Resource Council networks.</p> <p>Community Involvement</p> <p>As a Fortune 500 company with resources on a global scale, and a widespread presence at the local-level, we recognize our responsibility as citizens of our local communities and the world. CDW provides coworkers volunteer opportunities, including paid volunteer time off, and organizes many charitable events, including our annual Fun Drive each July. Last year CDW and our coworkers raised nearly \$700,000 for Children's Miracle Network (CMN) Hospitals, helping children in our communities throughout the United States and Canada, and bringing our 30-year total to more than \$8.3 million.</p> <p>Beyond our ongoing charitable work, when extraordinary catastrophes have occurred, CDW and our coworkers have been there to support the recovery. We have given our time and support to support those in need, including during the Indian Ocean Earthquake and Tsunami, Hurricane Katrina, the Haiti Earthquake, the Japan Earthquake and Tsunami, and Hurricane Sandy.</p> <p>Environmental</p> <p>Environmental Responsibility is a big part of our culture. Though CDW does not manufacture products, we continually work to be mindful of our carbon footprint by developing internal efficiencies and policies for waste reduction, and complying with ISO 14001 standards, all of</p>
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8	Provide a detailed description of the products and services that you are offering in your proposal.	<p>Sourcewell's 50,000 members are made up of public sector agencies and not-for-profits with diverse needs and compliance requirements: classroom technology, public safety equipment, implementation services for secure infrastructure that stores public data, HIPAA, FERPA. CDW Government LLC (CDW+G) offers 100,000 products and has more than 1,000 services coworkers, with a deep bench of preferred partners available to meet Sourcewell members' (Members) diverse needs. As the market for IT continues to mature, our experience is that more and more customers are seeking integrated technology solutions. CDW+G delivers these solutions—with advice, support, ideas, technology and the experience of thousands of experts. So whether it's a quick pick off the shelf, or something a little more involved, our full solution capabilities range from discrete hardware and software products and services to complex technology implementations::</p> <ul style="list-style-type: none"> * Hardware. Cables, collaboration and IP telephony, computers (including notebooks, tablets, thin clients), data storage, monitors and projectors, networking products, power, cooling and racks, printers, scanners, and print supplies. * Software. Backup/archive/storage, business, database and business intelligence, desktop/web publishing, management, operating systems, security, and virtualization. * Solutions. Business intelligence, cloud solutions, data center, digital signage, document management, managed print services, mobility, networking, point of sale, security, 3D printing, total software management, unified communications. * Services: <ul style="list-style-type: none"> o IT Consulting Services: Our consultants have years of experience in IT direction, process improvement, governance and technology for cloud, IT operations and business continuity as well as mergers and acquisitions. o Security Services: We prioritize security in everything we do, but we also specialize in security assessments and overhauls to safeguard one of your most precious assets — your data. o Networking Services: Our professional services team will assess the impact on your network bandwidth and recommend upgrades as needed o Cloud Services: Our IT consulting team can assess your needs and help you select the right SaaS or IaaS apps and cloud solutions for your business. o Data Center Services: Our engineers help you cut costs by replacing high-maintenance hardware with converged infrastructure and virtualized network and storage resources, on-premises or in the cloud. o Digital Workspace Services: Our team will help you optimize your network for mobile workspaces and collaboration while prioritizing efficiency and security. <p>With over 1,000 original equipment manufacturers (OEMs), Members have the choice of the usual heavyweights such as HPI, Lenovo, Cisco, Microsoft, Acer, Dell EMC, HPE. We also offer hundreds of other vendors making very cool products and providing very specific services that may be the precise technology for a Member in, say, public safety, such as Getac's rugged laptops, or Havis' mounting solutions.</p> <p>But at CDW+G we know just offering solutions, services, and products doesn't answer the mail. A critical factor for Members in their procurement goals is the delivery and implementation of the solutions, services, and products to ensure their needs are met. As our company has amassed this impressive portfolio of solutions, products, and services, our leadership foresaw the potential hazards of onboarding newer to market OEMs for our customers and built uncompromising oversight into our process as a result. Sourcewell members benefit from the following steps CDW+G built into our procurement process to ensure risk management on the solutions, products, and services we deliver:</p> <ul style="list-style-type: none"> - Requesting our OEM partners put in place supply chain risk management plans to control components sourcing and ensure that no gray market or counterfeit materials are incorporated into their products. - Vetting to ensure that only OEMs that produce genuine, quality equipment are added to CDW+G's manufacturer portfolio. - Acquiring equipment only from manufacturer-authorized sources. - Selling only equipment that we are authorized to sell. - Maintaining redundancy in our manufacturer portfolio, such that if one manufacturer is having trouble with counterfeit parts being introduced to its supply chain, the customer has the option of purchasing an alternative manufacturer from CDW+G. - Purchasing additional stock, when commercially reasonable, to provide customers access to replacement products should a recall be issued for products they have purchased. - Conducting quarterly business reviews with our major OEM partners where any counterfeit/gray market issues are addressed.
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9	<p>What are your company's expectations in the event of an award?</p>	<p>Whether it's the internal expectations we set for ourselves, or external expectations financial analysts place on us every three months when it comes time to publicly report our financials, CDW-G has a history of exceeding expectations. We are successful in exceeding expectations in part due to discipline and a forward-thinking approach. We think carefully about what the future will look like and use internal metrics to make sure we are tracking our forecasts (Please see Question 65 for sample metrics). This process makes us confident going on the record with our projections, knowing we will be held to these standards and expected to deliver. A highlight of the Sourcewell and CDW-G relationship over the years has been the alignment of expectations and the roadmap to meeting and often exceeding those. Before we dive in to our expectations upon award of this contract, we'd like to revisit our financial expectations set forth in the last Technology Solutions proposal and how we performed against those: Expected peak growth for 2018 as described in CDW-G 2014 Sourcewell/NJPA Technology Solutions proposal: \$350,000,000 Actual growth for 2018: \$550,000,000 For the next five years of this contract, we project the following revenue targets under a sole source award: 2020: \$594,930,000 2021: \$624,680,000 2022: \$655,910,000 2023: \$688,710,000 2024: \$723,140,000</p> <p>Here are five big ideas on how CDW-G and Sourcewell will get there together: 1) We expect Canadian performance on this contract will be a key differentiator. We have more than 400 coworkers in Canada to support Sourcewell members across the country. Our recent acquisition of Scalar Decisions Inc., a leading IT solutions provider in Canada, enhances the value that we can deliver to customers. Scalar's expertise is in professional and managed services, infrastructure, and security.</p> <p>2) We expect to further diverse partnerships to continue ongoing focus on all communities Sourcewell serves. We do this in a number of ways. Externally, such as in 2018 when we were invited to join the New York City Mayor's Corporate Alliance Program, which provides diverse businesses direct access to select partner corporations. And internally, with diverse supplier trainings for our sales force that enable better understanding of customers' diversity goals and initiatives, and CDW-G's diverse spend solutions.</p> <p>3) We expect collaboration on marketing to drive increased contract usage and growth. We will generate a spotlight media piece detailing the exclusivity of the CDW-G & Sourcewell agreement that can be shared through various channels, participate in cobranding marketing opportunities, continue sales enablement and training activities, and generate awareness of the agreement through key events and collateral primarily distributed electronically but also with printed releases. 4) We expect to continue our effective partnerships with the Sourcewell organization and other valued Sourcewell vendors. As one of the longest-tenured Sourcewell vendors and one of the largest in terms of sales volume, CDW-G brings tremendous resources to the relationship. We have actively participated in support of Sourcewell leadership and its annual vendor conference for fifteen years. Mark Ellis, from CDW-G's Program Management team, has been an active participant on Sourcewell's Vendor Advisory Board, collaborating on past initiatives, such as collecting data from the vendor community on ideas for improved collaboration with Sourcewell, and in Sourcewell's recent transition from NJPA, connecting Sourcewell to CDW-G marketing leaders and executives to review and solicit feedback. 5) We expect regular strategy meetings with Sourcewell to achieve the following goals: a. Align Sourcewell goals with CDW-G business development and sales leadership to create targeted lists of customers based on membership status, which we're already serving but with less activity than expected, and which we're not serving but should be. For example, CDW-G and Sourcewell's joint success in leveraging our strong public safety offerings to establish a relationship with the National Sheriff's Association is a blueprint for the future. b. Contribute research on key legislation that impacts cooperative purchasing. For example, we know recently Utah and Illinois passed legislation that should benefit cooperative purchasing initiatives in those states.</p>
10	<p>Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.</p>	<p>Sourcewell can be confident of CDW-G's financial stability. We are a subsidiary of CDW, LLC, which is a subsidiary of CDW Corporation, a publicly-owned Fortune 500 company. As a government agency, Sourcewell is familiar with the trust established through transparency. Four times a year our CEO, Christine Leahy, and CFO make public the results of our recent financial performance and the overall health of our company. We are very proud of our financial record. Selected current financial data:</p> <ul style="list-style-type: none"> * Current CDW corporate credit ratings are all stable: <ul style="list-style-type: none"> o Moody's: Ba2 o Standard and Poor's: BB+ o Moody's Outlook: Positive o S&P Outlook: Stable o Our cash plus revolver availability (open agreements to borrow) is at \$1.2B as of June 30, 2019, demonstrating strong financial credit. * Over the past decade our net sales have almost doubled U.S. IT spending as measured by Compound Annual Growth Rate ("CAGR") * CDW has been steadily increasing revenue for each year since we went public in 2013, reaching our highest-ever net sales at \$16.2B We have also uploaded CDW's past three annual reports to provide Sourcewell with a thorough accounting of CDW's financial health. Our complete financial portfolio is available at https://investor.cdw.com/

11	What is your US market share for the solutions that you are proposing?	We estimate that our total Net sales of approximately \$17 billion (on a trailing twelve-month basis) represents approximately 5% of our addressable market, which is estimated at ~\$325 billion.
12	What is your Canadian market share, if any?	We do not break out Canada separately; we have reported \$1.98B sales in Canada and U.K. in 2018.
13	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	As of the date of submission, CDW*G has never filed a petition for bankruptcy protection.
14	How is your organization best described: is it a manufacturer or a reseller? Provide your written authorization to act as a distributor/dealer for your sales and service force and with your dealer.	<p>a) CDW*G can best be described as a reseller. As part of our Additional Documents zip file upload, we have included written authorization to act as a reseller for the wholesale distributor Tech Data in both the U.S. and Canada. We feel partnering with a reseller like CDW*G over a manufacturer for your contract provides greater benefits to Sourcewell members. Sourcewell is looking for a vendor that can support a catalog that offers both depth and breadth to members. Manufacturers often default to promoting their own products, rather than the solution that best meets the Member's need. In fact, this can be true for a number of competing resellers as well. Some resellers can generate a substantial portion of their sales from one manufacturer partner, in some cases as much as 50%. This can also be a risky business model. CDW*G is uniquely unbiased. Proof is in our sales; our 2018 company revenue mix did not include a single OEM making up more than 10% of our total. One of the benefits of our vetted portfolio of 1,000 leading brands is that it insulates us, and our customers, from the events of any one company. OEMs and resellers relying heavily on one manufacturer partner can mean a cloudy future for contract success when a business-altering event takes place.</p> <p>Please visit our easy-to-search website for a list of the OEMs CDW*G is authorized to resell: www.cdwg.com/brands And please visit CDW Canada's website for a list of 1,000 authorized OEMs: www.cdw.ca/brands</p> <p>Another advantage of our reseller status is we have a captive sales audience, which means we can educate our internal sales force on contracts such as Sourcewell, how to sell on Sourcewell, and how to align sales messaging with the contract's needs. This process leads to contract adoption by CDW*G account managers and that has led to contract adoption by their customers. Together, we have increased new Member usage over the past five years by more than 20%. For our U.S. operations, in 2018 we purchased approximately 50% of the products we sold as discrete products or as components of a solution directly from our vendor partners and the remaining 50% from wholesale distributors. Additionally, we are authorized and do buy direct when economically advantageous. As one of the largest direct market resellers, CDW*G has established great working relationships with the major manufacturers in the technology industry. Our buying power attracts the industry's top manufacturers and their best prices and rebates. Most manufacturers send us daily Electronic Data Interchange (EDI) downloads with pricing and product availability information. Also, we receive timely notification regarding product changes and lifecycles. In a recent calendar quarter documented by one of our comprehensive Sourcewell sales reports submitted under the current contract, products and services sourced from 663 manufacturers were purchased by the Membership via the contract. These represent the entire range of the technology market from wires, cables and connected classroom furniture to advanced networking/data center solutions.</p> <p>Effective purchasing and inventory management are key elements of our business strategy that result in safe and secure IT hardware and software for our customers. Our management information systems, purchasing systems, radio frequency-based cycle counting system, and use of vendor stock balancing allow us to minimize our investment in inventory and to reduce inventory discrepancies and the risk of obsolescence.</p> <p>We conduct quarterly business reviews with our top suppliers and distribution partners to communicate any outstanding issues. We have developed supplier scorecards for our suppliers to drive service expectations and accountability, which directly relates to the customer buying experience. These scorecards have greatly improved service levels and are driving process improvement initiatives throughout the supply chain with many partners.</p> <p>CDW*G has a replenishment program with specific criteria for each manufacturer that takes lead-time into consideration when placing orders as well as monitors return rates to look for quality issues. CDW*G purchases products in volume when practical and stores the oversupply in our overstock locations. In this way, we can pass along volume discount savings to our customers, and the products are available for immediate shipment. We also offer staging options in which we can warehouse specific items, release them on a rollout schedule, and guarantee stocking position.</p> <p>b) Although CDW*G is best described as a reseller, we are also recognized as a service provider. CDW*G's sales force, including both inside and field-based personnel in customer-facing sales roles, are employed directly by our company. We do not use dealers, partners, or subcontractors in this role. Our business model offers Sourcewell members the advantage of leading manufacturers paired with strategic, integrated, comprehensive services. We know that accelerating changes in technology mean that customers require more than just a product to satisfy many of their IT needs. Most customers expect a security component built in to their purchase, which often means implementation, monitoring, and more. CDW*G has transformed from primarily a technology products reseller to include services as part of our integrated technology solutions catalog to keep pace with our customers' needs. We have built a services practice that supports more than 35,000 customers in 140 countries.</p> <p>Please visit our website for a video on how CDW*G services deliver innovation.</p>

		<p>www.cdw.com/services One example of how Sourcewell members benefit from our innovative services is in K-12. CDW•G provides broad and diverse services such as large volume Chromebook rollouts with White Glove Services, networking implementation under the e-Rate program, onsite deployment of whiteboards/video solutions, physical security upgrades, and Blueprint to Design™, a value-added design service that includes classrooms, media centers, cafeteriums, and STEM/STEAM labs. We can deliver all of the services requested in this RFP by means of our internal coworkers, which includes engineers with precise technical expertise, as well as through a network of trusted service providers with whom we have long-term, ongoing relationships. Many of the services we offer are scoped on a custom basis to meet the customer's specific needs. The ability to use our own coworkers as well as our network of service providers gives us flexibility and deep resources to meet changing workload demands. To make sure we are meeting our customers' needs, we have built a deep services practice that goes above and beyond OEM requirements. For example, Cisco's minimum requirement to be a Gold-Certified Partner is to have 4 Cisco Certified Internetwork Experts (CCIEs) on staff. While other vendors may be able to meet Cisco's minimum threshold to gain the designation, CDW•G takes it further to ensure we are meeting our customers' requirements by staffing our services team with 63 CCIEs.</p>
15	<p>If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.</p>	<p>We recognize that Sourcewell members are made up of government, education, tribal nations, and non-profit members. In our years of experience working with Members we've found they themselves don't require many licenses or certifications from IT vendor partners. Separate from this, there are unique state business licenses and tax certificates found at the state, county, and local level. CDW•G holds the applicable licenses and certifications to do business in every state on this contract.</p> <p>When it happens a local agency we haven't worked with before requires a license or certification we may not hold, our account managers work with our Finance or Program Sales team (depending on the requirement) to apply for the license. If the requirement is one we do not qualify for, like a small business certification, we work with our vendor partners to meet the customer's need. We also follow all applicable laws, such as prevailing wage legislation.</p> <p>For the licenses and certifications that are held by CDW•G, these reflect a commitment to stability and security through rigorous quality control standards. Our business succeeds in part due to an understanding with our partners that we can safely procure and implement their IT investments, and protect their critical information. Select quality control and technical certifications held by CDW•G are as follows: International Organization for Standardization (ISO). ISO certified since 2001, CDW•G has a mature, well-defined Quality Management Systems (QMS) that includes continued compliance to the following ISO Standards.</p> <ul style="list-style-type: none"> - ISO 9001 – Quality Management System: Sales, configuration and support of computer and related technology within both of CDW•G's Configuration Centers. - ISO 28000 – Supply Chain Security Management System: The planning, delivery and oversight of secure supply chain management and supporting activities in the US. - ISO 27001 – Information Security Management System: Provision of product sales to CDW•G customers, including all backbone functions and support of computer and related technology. - ISO/IEC 20243 – Information Technology: Complies with the requirements in the Open Trusted Technology Provider Standard (O-TTPS). - ISO 14001 – Environmental Management System: The environmental activities related to product/service management, inventory control, shipping, returns management, and receiving for computers and related technologies, excluding the office, cafeterias and the lessee area. <p>HIPAA - Health Insurance Portability and Accountability Act: CDW•G complies with all applicable HIPAA regulations, including those related to auditing.</p> <p>SSAE16 Service Organization Controls (SOC) 1 Type 2 – CDW•G Managed Services has had clean, annual PCI and SAS70 Type II (and now Statement on Standards for Attestation Engagements No. 16 (SSAE16)) audits since 2004. PCI Level 1 Compliance – CDW•G Managed Services is audited annually for Level 1 Payment Card Industry (PCI) compliance which attests to the fact that our Managed Services operations and services meet requirements to comply with the standards of the PCI Security Standards Council.</p> <p>Additionally, CDW•G's certifications and knowledge-depth extend to the individual level. Our coworkers hold many technical certifications to support the diverse technology solutions in our catalog. Please find these in Question 69.</p>
16	<p>Provide all "Suspension or Disbarment" information that has applied to your organization during the past ten years.</p>	<p>As of the date of this submittal, and for the prior ten years, CDW•G certifies that to the best of its knowledge and belief, CDW•G has not been listed by any federal or state authority as debarred or suspended, where such debarment or suspension would have a material and adverse ability on our ability to perform hereunder.</p>

17	<p>Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.</p>	<p>Accessories Power, Cooling & Racks Desktop Computers Data Storage/Drives Enterprise Storage Point of Sale/Data Capture Servers & Server Management Notebook/Mobile Devices NetComm Products Carts and Furniture Printing & Document Scanning Services (Partner Delivered) Software Collaboration Hardware Video & Audio Cables Warranties-Product Protection Video Hardware Interactive Whiteboards Interactive Flat Panel Display Chromebooks Google Chrome Management SaaS</p>
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Industry Recognition & Marketplace Success

Line Item	Question	Response *
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18	Describe any relevant industry awards or recognition that your company has received in the past five years	<p>Sourcewell is committed to building valued relationship and delivering innovative solutions with integrity, exceeding the expectations of its members. Offering its members the opportunity to purchase the best IT at a competitive discount is an important part of Sourcewell's commitment, but so is the character and quality of the vendor that Sourcewell provides as a business partner.</p> <p>Over our decades of doing business, our company has been recognized as creating the sort of environment that empowers its coworkers to be successful. We make it great for our customers by making it great for our coworkers. Here we highlight five recent workplace awards and recognitions that speak to our company and culture. One of the Best Places to Work in IT 2019</p> <p>Computerworld This year, which marks the 19th time our company has won the Computerworld for Women in 2019</p> <p>Fairygodboss Fairygodboss named us one of the Best Companies for Women in 2019 for our commitment to gender diversity and both recruiting and retaining female talent. Fairygodboss is the largest career community for women.</p> <p>Best for Vets Employer 2019 Military Times</p> <p>Military Times named our company one of its Best for Vets Employers in 2019, placing us among the top employers for veterans based on culture, recruiting, policies, and resources related to veterans, service members, and military families. Perfect Score in Corporate Equality Index 2019</p> <p>Human Rights Campaign We were recognized with a perfect score of 100 percent on the Human Rights Campaign's 2019 Corporate Equality Index (CEI) and the distinction as a Best Place to Work for LGBTQ Equality.</p> <p>Top 100 Solution Providers Computer Dealer News (CDN)</p> <p>Every year CDN compiles a list of the Top 100 IT Solution Providers in Canada based on company revenue. CDW Canada ranked No. 2 in 2019 (based on 2018 revenue). Above are select awards from 2019. Over the past few years we have received many awards and recognition, and those include the following list:</p> <ul style="list-style-type: none"> - 100 Best Places to Work in Chicago - Best Places to Work in Connecticut - Top Companies to Work for in Arizona - Tampa Bay Business Journal Best Places to Work - Dallas Business Journal Best Places to Work - Forbes' America's Best Employers - Military Friendly Employer Award - Business Equality Network LGBTQ Business Equality Excellence Award - Workforce 100 and Human Capital Media Research recognized CDW as one of the 2018 Workforce 100 - Canada's Channel Daily News named CDW Canada the No. 2 Solution Provider of the Year, and Scalar, a CDW Company, the Top Storage Provider of the Year, Workplace honors are only part of what makes our company special. We also commit to excellence in the eyes of our OEM partners in order to further our partnerships in delivering best-value solutions to our customers. A sample of our partner recognition over recent years is as follows: - Aruba Top Channel Partner Award - Citrix U.S. Public Sector Partner of the Year - Cisco Collaboration Partner of the Year - Dell President's Circle Award - HP Partner of the Year - HPE North America Network Service Provider (NSP) Partner of the Year Award - HPI largest partner in Direct Reseller Channel - IBM North America Top Strategic Business Partner Leadership Award - Intel North America Public Sector Partner of the Year - Lenovo's largest Global Direct Response Channel Partner - Microsoft Partner of the Year - Nutanix Global Partner of the Year - Sophos National Partner of the Year - VMware Partner Innovation Award
19	What percentage of your sales are to the governmental sector in the past three years	<p>2018: 34%</p> <p>2017: 28%</p> <p>2016: 34%</p>
20	What percentage of your sales are to the education sector in the past three years	<p>2018: 38%</p> <p>2017: 36%</p> <p>2016: 36%</p>
21	List any state or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	<p>CDW+G holds numerous state or cooperative purchasing contracts, including AEPA, TIPS, PEPPM, E&I. Unlike Sourcewell, however, most of our cooperatives that we work with are not public agencies, a decided disadvantage to transparency. While we cannot provide the sales volumes, Sourcewell can find a full list of our publicly available agreements at www.cdwg.com/contracts.</p>

22	List any GSA contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	CDW*G holds the GSA Schedule Contract: 47QTCA18D004K, open to all federal and civilian agencies, state and local agencies, and public schools. Annual sales volume for the past three full years: 2018: \$142,600,688 2017: \$133,866,901 2016: \$142,939,903
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References/Testimonials

Line Item 23.

Entity Name *	Contact Name *	Phone Number *
Elk Grove Unified School District	Todd Barber	916.686.7710 ext.68051
City of Chattanooga	Matthew McDarmont	423.643.6339
University of Colorado	Duane Tucker	303.764.3453
Queen's University, Kingston, Ontario	Andy Green	613.533.6000 ext. 32175
City of Swift Current, Saskatchewan	Dwayne Levoie	306.778.2708

Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *
Georgia Institute of Technology	Education	Georgia - GA	1. Software 2. Netcom Products 3. Notebooks/Mobile Devices	19,107 orders ranging in size from large to small invoiced at various dates throughout contract year	\$23,575,763
Florida International University	Education	Florida - FL	1. NetComm Products 2. Desktop Computers 3. Software	5,701 orders ranging in size from large to small invoiced at various dates throughout contract year	\$18,026,658
University of Washington	Education	Washington - WA	1. Software 2. Services (partner delivered) 3. NetComm Product	2,936 orders ranging in size from large to small invoiced at various dates throughout contract year	\$17,731,256
Clarksville- Montgo County Schools	Education	Tennessee - TN	1. Notebook/Mobile Devices 2. NetComm Products 3. Video and Audio	331 orders ranging in size from large to small invoiced at various dates throughout contract year	\$17,569,029
Valverde Unified School District	Education	California - CA	1. Notebooks/Mobile Devices 2. Desktop Computers 3. Software	1,992 orders ranging in size from large to small invoiced at various dates throughout contract year	\$13,029,947

Ability to Sell and Deliver Service Nationwide

Describe your company's capability to meet the needs of Sourcwell Members across the US, and Canada if applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *
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25	Sales force.	<p>As Sourcewell's member base continues to grow in the U.S. and Canada, its ideal partner on this contract will be able to keep up as a valued provider to your diverse membership. But beyond blanketing Members with sheer numbers, Sourcewell's ideal partner should also be aligned with the nuances of your members' industry sectors and procurement environments; able to offer specialized support to help Members meet their goals; and to fulfill this contract's full potential.</p> <p>As part of the CDW Experience, we organize our sales force differently from other companies in order to best serve our customers. First, we form account teams knowledgeable about the unique public sector customers they support. These account teams serve customers exclusively within their sector, which closely match up with Sourcewell's member base: K-12 Education, Higher Education, State and Local Government, Federal Government, and Healthcare. The advantage to CDW+G's model is that our account managers become experts within their sector, able to respond to the very specific needs of each. For example, our account managers in education are knowledgeable in FERPA and other privacy laws, our account managers in State and Local Government track applicable laws to the states they serve, Healthcare teams understand HIPAA. Within each sector, CDW+G's sales force is then divided into eleven geographic regions across the United States. To support this model, we have office locations all across the country. This combines our vast resources as a Fortune 500 company with a personalized presence right in the neighborhood. As a result, the CDW+G sales force is aware of and prepared to support the local landscape in a way that is unmatched by personnel at both small local companies and national companies. Our full listing of 25 U.S. sales offices is as follows, including a new location in the Nashville area, a 5,000-square-foot-office enabling us to better support Sourcewell members in Tennessee and the South: Chandler, AZ; Glendale, CA; Shelton, CT; Tampa, FL; Chicago, IL; Lincolnshire, IL; Vernon Hills, IL; Evansville, IN; Indianapolis, IN; Detroit, MI; Grand Rapids, MI; Minneapolis, MN; Las Vegas, NV; Cherry Hill, NJ; Eatontown, NJ; Cincinnati, OH; Cleveland, OH; Nashville, TN; Dallas, TX; Reston, VA; Bellevue, WA; Appleton, WI; Madison, WI; Milwaukee, WI; Wausau, WI. Sourcewell members receive expertise, experience, and strength in numbers with CDW+G. They will have access to the following specialized sales account managers in each sector:</p> <ul style="list-style-type: none"> - Higher Education: ~200 - K-12 Education: ~350 - Healthcare: ~250 - Federal Government: ~200 - State and Local Government: ~225 <p>Each Sourcewell member will receive an account team that maintains overall responsibility for making certain we deliver the unique CDW Experience. One part of the team is made up of the account manager, who listens to develop in-depth knowledge of Member values, technical environment, and financial objectives, to then offer ways in which CDW+G can cut costs, increase productivity, and simplify procurement. Supporting the account manager, Members also have a field account executive, who will arrange to visit Member sites for business reviews, solution and services consultation, white board sessions and other meetings, on a regular basis or as needed. And, of course, Sourcewell receives your own dedicated account manager, who ensures Sourcewell pricing is applied to Members' quotation or order, and affirms that the sale and subsequent fulfillment and invoicing is conducted in accordance with the requirements of the Sourcewell contract. In addition to our U.S. presence, we will support Sourcewell's members in Canada through our mature presence there. Since establishing Canadian headquarters in 2003, CDW Canada has grown significantly, adding coworkers across the country to better serve customers in their regions. Public Sector sales teams are organized by vertical: education, government, healthcare. With a recent strategic acquisition of Scalar Decisions, CDW Canada has coworkers located in most of the major cities across Canada including Ottawa, Calgary, Edmonton, Montreal, and Vancouver. CDW Canada's head office is in Toronto, ON, employing more than 400 coworkers and supporting customers and partners across the country. The number of specialized sales support Sourcewell members in Canada will have access to in each sector:</p> <ul style="list-style-type: none"> - Education: ~20 - Government: ~20 - Healthcare: ~15 <p>All of CDW+G and CDW Canada's salesforce are direct employees.</p> <p>Where our sales and services overlap, Sourcewell members will benefit from yet another unique advantage of CDW+G's business model. We provide access to incomparable value-added resources and technical expertise while simplifying the process through a single, dedicated point of contact. Sourcewell members' CDW+G account managers function as the quarterback here to engage our value-added resources, which include sector-specific support specialists, such as our Public Safety team (law enforcement, fire rescue, emergency medical services, and emergency management organizations) and Education Strategists and Learning Environment Advisors. Also, highly trained presales specialists who are experts in particular areas of technology, and for specific partner solutions, including more than 100 systems engineers who assist with evaluating products based on unique operational requirements and budgetary constraints.</p>
26	Dealer network or other distribution methods.	CDW+G doesn't use dealers. We resell directly.

27	Service force.	<p>As Sourcewell's member base continues to grow in the U.S. and Canada, its ideal partner on this contract will offer thorough, localized service coverage to meet the high standards of responsiveness that members have to come to expect on the current contract. Supporting CDW-G's sales force in providing value to Sourcewell members is an extensive service force, made up of in-house service professionals and a Trusted Partner Network that span coast to coast. Technology procurement goals have evolved since Sourcewell and CDW-G both came into existence decades ago, moving from box pushing to complex solutions made up of different specializations. To make sure we are close-by, responsive, and able to understand our customers' evolving needs, CDW-G has built a local services presence across 32 cities in the U.S.. Our full listing of U.S. services locations is as follows: Phoenix, AZ; Los Angeles, CA; San Diego, CA; San Francisco, CA; Denver, CO; Miami, FL; Tampa, FL; Atlanta, GA; Chicago, IL; Evansville, IN; Indianapolis, IN; Boston, MA; Detroit, MI; Grand Rapids, MI; Minneapolis, MN; St. Louis, MO; Raleigh, NC; Las Vegas, NV; New York City, NY; Cincinnati, OH; Cleveland, OH; Philadelphia, PA; Pittsburgh, PA; Nashville, TN; Dallas, TX; Houston, TX; Seattle, WA; Washington D.C.; Appleton, WI; Madison, WI; Milwaukee, WI; Wausau, WI Here's a further services coverage breakdown, by services area and resource type.</p> <ul style="list-style-type: none"> - Professional Services Engineers and Project Managers (CDW-G coworkers) across 25 cities in the U.S. - Partner Services network resources across 32 cities in the U.S. - Professional Services-National Team Engineers and Project Managers (CDW-G coworkers) across the U.S. - Configuration Center Technicians (CDW-G coworkers) in Chicago and Las Vegas. - Managed Services-Network Operations Center Engineers and Project Managers in Madison, WI, Minneapolis, MN and Chicago, IL. - Aggregation Services third-party hosting centers across the U.S. CDW-G delivers service by means of our Partner Network with whom we have collaborative, ongoing relationships. <p>Our Engineers We have over 1,000 services professionals. Instead of breaking our services professionals into sector, with the exception of the federal sector, which has its own unique clearance requirements, our services professionals are deployed into all segments. We are always thinking about what provides the best value for our customers and the optimal solution outcome, and in services we believe expertise exists within a particular technology, not sector. For instance, when implementing a Unified Communications solution or monitoring an IBM mainframe, it matters more that the engineer knows those technologies, not whether it's for a school or a county office. And our engineers know those technologies, and a whole lot more. Our commitment to this ideal has led to nearly 6,700 coworker technical certifications. For a more detailed listing of technical certifications, please see Question 69.</p> <p>Trusted Partner Network CDW-G has strong alliances with approximately 1,200 services providers, which includes minority, women-owned, and other small, disadvantaged businesses, who provide consultants and engineers to complement CDW services projects. When we feel that a partner can provide the best-value on a given project, we select one based upon their ability to meet the needs of the customer, using such criteria as price, responsiveness, quality, geographic reach, available skill-set, length of project and overall customer satisfaction. We choose our service providers carefully, enabling us to focus on developing strong relationships with only the most competent providers. A majority of our partners are organizations Sourcewell members will recognize: Cisco, Microsoft, IBM, Google, Fujitsu, Oracle, Adobe, MP Integrated Solutions, Atomic Data, Twin City Hardware, and many more. By partnering with these companies, CDW-G brings our customers best-value solutions. In addition to our U.S. presence, we will support Sourcewell members across Canada. We have services coworkers in the following major cities: Calgary, AB; Edmonton, AB; Vancouver, BC; Winnipeg, MB; Toronto, ON; Ottawa, ON; and Montreal, QC. These are supported by partner network resources nationwide. A further services coverage breakdown, by services area and resource type.</p> <ul style="list-style-type: none"> - Configuration Center Technicians leveraging our distribution partnerships in the following major Canadian metropolitan cities: Greater Vancouver, Calgary, Greater Toronto and Guelph, Montreal and Halifax. - Aggregation Services and partner hosting center in Toronto
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28	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	<p>CDW+G's goal is to minimize lapses in performance fulfillment, and there are many controls in place to ensure customer satisfaction is continually met. For example, we are proud of our historical percentage of Dead-On-Arrival units being less than .6%, against an exceptionally high output—the number of units shipped daily in recent years is at nearly 150,000. Still, we continually strive to improve the customer experience as part of the CDW Experience.</p> <p>If due to unforeseen circumstances there is a lapse, we have a support plan in place to listen, evaluate, correct, and understand. To simplify the customer service process, we recommend Sourcewell members bring any issues or inquiries to the attention of their account manager. Members' CDW+G account managers should be the center of their customer service and support experience. Barring unforeseen circumstances, account managers respond between 30 minutes and four business hours. They will work to resolve the incident, taking the necessary steps to ensure a best outcome. Or if the account manager is unavailable that day, a backup is assigned. Members' full account support team is available through their online account. It shows the live status of their representatives' availability. Please see Question 52 for more information related to online account capabilities. CDW+G account managers' first step is always to listen. Then they evaluate and determine the best next steps. If the account manager cannot correct the issue, they will escalate it to their sales manager. If the sales manager cannot correct the issue, they will escalate it to the director. Escalation continues until we provide a suitable solution to the performance issue. A word of note: beware of proposed incident escalation paths that go no further than issue resolution. Because Sourcewell members will likely get very familiar with these escalation paths. Vendors that correct the problem but acknowledge it no further than incident escalation/resolution will be able to offer only temporary fixes. They won't understand the causes of where they failed to meet member expectations. A follow-up step in our incident escalation process involves taking the incident resolution process one step further. Our sales teams work hand-in-hand with our Program Management team to ensure that for issues requiring significant escalation, we determine proactive measures to prevent the problem from recurring. We want to understand why it happened to make sure it doesn't happen again. This is one of the reasons we are consistently lauded for outstanding customer service.</p> <p>As a back-up support option, Sourcewell members can always choose to contact a customer relations representative. CDW+G has representatives available to resolve post-sales inquiries from 7:00 a.m. until 9:00 p.m. CT, Monday through Friday, or via email at customerrelationsreturns@cdw.com, with a reply back within 24 hours. As part of our focus on listening in providing customers the CDW Experience, we regularly measure customer satisfaction to find out how we can even better meet our customer needs. Because we know that what worked for our customers in 2010 may not be the best method in 2020. That's why since 2000 our Customer Feedback Program has run via our Market Research Team. The program measures customer satisfaction, thoughts about CDW+G, and problem areas. The primary methodology is a semi-annual survey which gathers information on customer-facing departments including shipping, customer relations, and the customer's sales team. Customers assess key touch points and high-level company characteristics.</p> <p>Customers are selected on a random basis to participate in the surveys. If a customer provides a response that is ranked poor or fair, then a specialist from our Quality Assurance team contacts the customer to determine the reason for their unsatisfactory response and offers additional action to rectify the problem. Notices including customer contact information and feedback are sent to CDW+G sales managers so they can follow up. However, the majority of end users supply favorable survey comments. As a testament to our dedication to customer service, CDW is a past winner of the Forrester Groundswell Award for B2B Listening.</p> <p>Below are the results from CDW's semi-annual Customer Relationship Survey in June 2019.</p> <p>Overall Performance Account Manager – 91% Customer Service Staff – 90% Delivery Process – 91%</p> <p>But of all the statistics we track, measure, and apply to our company, we feel the statistic that best measures our customer service is our industry longevity and that customers keep returning to us for their IT needs. For example, of the almost 14,000 Sourcewell members from all market segments who purchased via Sourcewell in 2017, nearly 70% purchased from CDW+G again in 2018.</p>
29	Identify any geographic areas of the United States that you will NOT be fully serving through the proposed contract.	None. Sourcewell members in all geographic areas will be fully served by CDW+G on this contract.
30	Identify any Sourcewell Member sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	None. All Sourcewell member sectors will be fully served by CDW+G on this contract.
31	Define any specific contract requirements or restrictions that would apply to our Members in Hawaii and Alaska and in US Territories.	None. We are shipping to Members in Hawaii, Alaska, and in the US Territories. In 2018, we processed 1,139 orders for Members in these states and territories.

Line Item	Question	Response *
32	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	<p>Industry awareness is critical in establishing a successful cooperative contract and growing its use. In a competitive cooperative landscape, with the very same vendors aspiring to be named to Sourcewell that are already holders of multiple other cooperatives, Sourcewell's ideal partner needs to fully understand the uniqueness of Sourcewell and how to showcase it, using thoughtful resources and creativity.</p> <p>CDW•G and our marketing team are very familiar with the Sourcewell brand. We participated in Sourcewell's successful rebranding effort from NJPA, connecting Sourcewell to CDW•G marketing leaders and executives to review and solicit feedback. Our marketing team is also recognized industry-wide for its campaigns. We were recently named a finalist for Content Marketing Project of the Year by the Content Marketing Institute, the largest and longest-running international content marketing awards program in the world. Added to these distinctions, Sourcewell's CDW•G Program Management team, who know Sourcewell inside and out through the current contract on a day-to-day basis, collaborate with CDW•G's marketing department to create awareness campaigns to disseminate key contract information to potential end users. Taking into account our experience and familiarity from more than 15 years of successfully working together, CDW•G has a forward-looking, 10-step strategy that maximizes our wide-reach to create awareness of Sourcewell in the U.S. and Canada, driving further adoption and spurring increased growth on the next contract.</p> <p>1. Member Transition. To begin, upon award CDW•G will transition Members using the current contract to the new contract. After contract launch, we can add any Member who requests being added to this contract by linking them to the contract within 5 business days of request. CDW•G's marketing plan begins with continuing to market this agreement to all eligible Sourcewell members.</p> <p>2. Agreement Transition Plan. Possibly the most important step is a well-oiled transition plan from CDW•G's current agreement to the newly awarded agreement. We've already created a sample contract landing page that is ready to go live on Day 1. Please access it at www.cdwg.com/Sourcewell. We'll keep this site up to date with all the latest contract information. Products and pricing are available right now. We will also collaborate with Sourcewell marketing to create an email awareness campaign to explain how CDW•G and Sourcewell will make the transition seamless for the Sourcewell membership. For all piggyback agreements that are currently set up between CDW•G and Sourcewell, David White, Sourcewell's program manager, will work with the local sales team to build a transition plan for each agreement to ensure continuous use of the Sourcewell and CDW•G agreements.</p> <p>3. Customer Facing Collateral. In an effort to drive awareness of the Sourcewell agreement through CDW•G, collateral will be distributed electronically, on the Sourcewell landing page, and printed for Sourcewell customers. Collateral will communicate the benefits of purchasing through the agreement from CDW•G as well as showcase products, services, and solutions offered to customers. As a part of this proposal, CDW•G has created customer-facing collateral that is ready for immediate distribution upon award. Our strategy is twofold. First, to ensure business continuity for our current Sourcewell customers, making sure they are promptly aware of the new contract so that we transition smoothly into the next agreement. Second, we want to increase awareness and adoption for current nonmembers in order to promote net new growth for Sourcewell. These sample documents can be viewed as part of our document uploads in this section, as well as at www.cdwg.com/Sourcewell.</p> <p>4. Sales Enablement/Training. A Sourcewell member's first point of contact with CDW•G is typically their dedicated account manager. Correspondingly, it is critical that our account managers understand the scope and benefits of the Sourcewell agreement. In conjunction with the technical trainings offered to our CDW•G account teams, our Program Management team will also train our sales teams regarding the Sourcewell agreement with CDW•G. Training won't be a one-time thing— David White and the CDW•G Program Management team continuously train and provide information to educate the sales force on updates or changes to our program with Sourcewell. Having multiple touch points throughout the year helps provide additional ways for the team to gain information that directly relates to launching the program, maintaining compliance, and promoting growth of the Sourcewell agreement. The range of the CDW•G training program allows our account teams to support Sourcewell members through the entire sales cycle from project inception, purchase, solution deployment, and post-sale support. Moreover, our account teams then propagate the value of the Sourcewell agreement to non-members helping to drive increased adoption and contract growth.</p> <p>5. Monthly Email. CDW•G produces and distributes a Sourcewell specific email monthly to approximately 11,000 CDW•G Sourcewell customers. Emails have been designed to highlight monthly rotating solutions topics for the Sourcewell members such as Hyper-Converged Infrastructure (HCI), Mobility and Networking, along with direct links to the CDW•G/Sourcewell landing page. Please see a sample email we recently sent out included in our marketing materials document uploads.</p> <p>6. Corporate Communications. Upon award, CDW•G will generate a spotlight media piece at the CDW Newsroom site detailing the exclusivity of the CDW•G Sourcewell Agreement. These can be shared with select media publications. We also encourage both corporate and individual coworker social media channels to share releases at CDW Newsroom. Finally, it will be a part of a daily, internal newsletter that reaches CDW•G coworkers.</p> <p>7. Sourcewell Branding Logo. A CDW•G and Sourcewell branding logo will be created to include on the email auto signatures of sellers with applicable customers. The logo will direct customers to the Sourcewell landing page.</p> <p>8. Ability to Collaborate on Co-Marketing Efforts. CDW•G is able and willing to participate in cobranding marketing opportunities for all future proposals from Sourcewell. We are actively working to expand the Sourcewell footprint into strategic industries, opening up new channels of membership to Sourcewell. A sample document upload in this section includes the successful LE Supply Pro/National Sherriff's Association and CDW•G promotional effort.</p> <p>9. Social Media. CDW's marketing team has many advanced tactics to reach Sourcewell customers in the US and Canada. Please see Question 33 for information on how our social media presence can generate and increase awareness.</p> <p>10. Executive Sponsorship. Part of CDW•G's commitment to our customer base is constantly</p>

		<p>seeking out opportunities to strengthen our national partner relationships. We view executive alignment as a key part of a successful contract strategy. Our Program Management team conducts quarterly business reviews with CDW•G executive leadership and a significant portion of this agenda is devoted to Sourcewell, including usage statistics and growth trends. The Sourcewell contract continues to be of great interest at CDW•G's executive level because of our successful growth strategies.</p>
33	<p>Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.</p>	<p>To advance Sourcewell's message in the crowded public cooperative landscape, Sourcewell's ideal partner will need to go beyond the slicks, glossy one-pagers, and email blasts of a traditional marketing campaign to reach future Members who don't today, and won't ever respond to information presented that way. In 2019, many go to social media for their news and information. It's been reported the U.S. and Canada have a combined 50 million Twitter users. So ask yourself what sort of technology solutions company is not making use of one of the largest technology platforms to reach customers and future customers in these countries? We've been on Twitter since 2012 and as of this submission have more than 46,000 followers. Using technology to promote and sell technology —seems smart. At least it does to our company. In fact, CDW•G leverages an employee advocacy tool that spans social media. It's called Social Squad, and it allows employees across the company to access curated social media content to share to their personal social media networks, including LinkedIn, Twitter, and Facebook. The platform has 2,248 registered members and gains more every day. In July, our employees shared 9,400 times and generated 26,700 clicks and 14,514,910 impressions. The platform also has an app available for iOS and Android. Social Squad members share content on a number of topics, including CDW news, products and deals, emerging technologies, product launches, featured partners, and more. In order for this contract to be used to the fullest extent, it needs to be embraced by both the IT teams and the procurement departments of eligible users. Other than first-hand experience, we think the best way to making a last impression on our customers' IT teams is storytelling. For this reason, we suggest a series of customer success stories, either written or potentially delivered as webinars. We envision a CIO or CTO to highlight how they worked with CDW•G and used the Sourcewell contract to solve a problem. The target audience for these webinars will be other CIOs and the engineers who work for them. We would ask Sourcewell to help develop this concept and eventually co-promote the message with the membership.</p>
34	<p>In your view, what is Sourcewell's role in p Sourcewell- awarded contract into your sal</p>	<p>Having grown from a small, local purchasing cooperative to its status today as a national leader in public contracts, Sourcewell understands effective messaging. Sourcewell's ideal partner on this contract will make sure Sourcewell is an active partner in spreading the word of this new contract's benefits and features. We expect that following the RFP process and a continued partnership with CDW•G, Sourcewell will announce the new contract award to its 50,000 members. We expect Sourcewell and CDW•G will collaborate on contract launch and marketing material for the Sourcewell membership. And additionally collaborate and build an announcement program to the Sourcewell team. We expect Sourcewell and CDW•G will build strategic partnerships under the agreement with an effort focusing on target customers who require a contract for purchasing. We expect Sourcewell will continue to attend influencing trade shows for the procurement community and include CDW•G in Sourcewell's awareness campaign at those shows. We expect Sourcewell will be a trusted advisor and partner in designing a contract training program for CDW•G internal and field sellers with a contract training program. Which transitions into contract integration. For our part, tenured CDW•G account managers are actively marketing the current Sourcewell contract to customers and are very familiar with its benefits, including special product categories, a unique administrative fee structure, and flexibility, such as CDW•G's augmentation of the prior contract to include Dell EMC products and AWS. Transitioning to the new contract with CDW•G will be seamless and avoid the predictable sales dip of other scenarios. Sourcewell does not have to worry about member confusion or orders held up during training and setup time. Business will continue to flourish, and training time will be used as a refresher, providing contract updates and focusing on strategies to increase adoption. Each year, as CDW•G continues to grow, we do hire a significant number of new account managers. To inform and enhance our sales force's understanding of the Sourcewell contract and its nuances, within the first 30 days post award we will conduct a 'refresh' training with all account managers and Sourcewell staff should be present to impart your passion for cooperative purchasing as well as answer questions.</p>

35	Are your products or services available through an e-procurement system and how government agencies use it?	<p>Sourcwell members already procuring technology through e-procurement, and for those who might like to, benefit from a mature e-procurement practice, with a deep understanding of integrations and resources dedicated to driving customer adoption. In our experience, customers can save anywhere from \$30-65 per transaction by using a reliable, secure e-Procurement system that automates their process from procurement to payment.</p> <p>As a company, CDW has completed more than 9,000 e-Procurement integrations. Our in-house staff of over 200 IT personnel are dedicated solely to our web, internal, and e-commerce IT systems. Sourcwell members who would like to explore an integration, benefit from our best practices and lessons learned from nearly 20 years of integration experience. We've pretty much seen it all. We'll advise on what works and what doesn't. For example, we find that the best user experience is a mix of both eProcurement and EDI (Electronic Data Interchange) for invoicing and asset management. Or that government and education customers often realize significant benefits due to decentralized procurement structures. One of our largest education customers has 6,000 authorized buyers across 350 unique departments. CDW-G's e-procurement solution has helped them simplify procurement by using one system and leveraging the Sourcwell agreement. However, experience has also taught us that each customer requirement is different. Therefore we offer a wide range of systems to support member needs, including cXML, OCI, as well as EDI. Through CDW-G integrations, members are able to leverage their preferred e-procurement system or to visit our website that is custom designed for compliance and strict adherence to the Sourcwell contract. We've created a sample landing page that can be accessed here: www.cdwg.com/Sourcwell</p> <p>Our mature e-procurement practice also means members won't have long to wait to begin using their system. By integrating quicker than our competitors, CDW-G simplifies procurement for Sourcwell members, allowing them to buy IT the way they need based on their specific requirements. We can set up member credentials within 24 hours, with most integrations taking fewer than 45 days depending on the needs of the customer. If invoicing is needed, that can mean additional time depending on complexity and testing with the customer.</p> <p>Beyond saving Sourcwell members time, CDW-G saves Sourcwell members money both through the aforementioned transaction savings and by charging no fees to set up their e-procurement punchout, EDI setup, creation of the portal, or a Purchase Authorization System setup. The only fees come from Members' own e-procurement software solution, as applicable. Outside of providing integrations at no charge, CDW-G also has resources in e-commerce and business development to train end users on how to leverage CDW-G's punch-out catalog or customized e-commerce portal for ordering. Training may be offered on-site, virtually via WebEx, or through recorded sessions that can be accessed on demand. Training generally consists of a walk-through of the customer's customized portal, an overview of the most commonly leveraged tools, and Q&A. The training is optional and offered at no additional charge to the customer. We understand some Sourcwell members won't choose to procure this way, or maybe it's not currently available to them. That's okay, too. CDW-G offers our own Purchase Authorization System. PAS is a way to help customers control rogue orders and promote centralized billing with approval processes through our website. It is yet another way CDW-G maintains rigorous quality control standards on our procurement process.</p> <p>As part of our integrated solution capabilities, we work with both p-cards as well as invoicing and leasing through our site, to fit the different needs of Sourcwell members.</p>
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Value-Added Attributes

Line Item	Question	Response *
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36	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell Members. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	<p>Training and knowledge share empower customers in an increasingly complex and diverse technology environment. On prem, off prem, hybrid, as-a-service, mobility, virtual reality...there is much to grasp and understand. We're in awe of the autodidacts in Sourcewell's member base, but we also suspect many Members don't have the time to learn the nuances of every product they purchase, or would like to purchase, in CDW-G's catalog. For a contract of this size—most vendors competing for this Sourcewell contract offer technology catalogs featuring upward of 100,000 products—Sourcewell's ideal partner must have the resources in place to help Members fully understand their options in order to maximize investments.</p> <p>CDW-G supports Sourcewell members in a number of different ways. Members should work with their CDW-G account manager to take advantage of all our programs. Sourcewell members have access to CDW-G's deep value-added technology enablement resources. We have a team of more than 100 systems engineers in manufacturer-funded positions who provide pre-purchase support for their particular manufacturer's solutions. We also offer general technology learning services. For instance, CDW-G's Cloud Planning Services, hosted by our cloud team, combines workshops, diagnostic services, and consulting engagements to help Sourcewell members determine which applications and workloads are ideal for the cloud. We offer similar services related to nearly everything we sell in our Tech Solutions Library. From choosing a keyboard to modernizing a classroom, our experts provide thoughtful recommendations. Please visit our Tech Solutions Library for more than 400 entries: https://www.cdw.com/content/cdw/en/articles/tech-solutions-library.html</p> <p>For Sourcewell's many K-12 members, CDW-G offers specialized support. Our team of educational strategists assist in aligning teaching and learning with individualized technology roadmaps. Past topics have included effectively using technology in the classroom, designing digital curriculum, and furthering digital literacy and citizenship for staff and students. Please see our response to Question 41 for full details on this value-added resource. Another way CDW-G supports Sourcewell members is to enhance user experience through our close OEM relationships. For example, in partnership with the Cisco we recently hosted a Cisco Threat Hunting Workshop for customers in Nebraska. The workshop uncovered best practices for threat hunting, demonstrated how to incorporate threat hunting into daily workflow, and enabled participants to execute four real-world lab scenarios. And we offer device-specific support. CDW-G's Microsoft Surface Hub Deployment and Adoption Services helps customers get the most out of their investment by delivering enablement activities that cover the Surface Hub journey from unboxing and setup, all the way through targeted adoption and teamwork training for end users. These training features are often included as part of a deployment package, but do vary on a case-by-case basis. We also leverage our OEM partnerships, including Lenovo and HPI, for self-maintainer programs. Many notebook and desktop manufacturers offer options for customers' IT teams to become self-maintainers. This typically includes a short test and a fee to gain the certification. These programs allow IT staff to perform equipment repairs in-house, saving time and money. Finally, we serve Members' technology training and development needs using CDW-G partners such as Directions Training. Together we have been offering excellent information technology and professional development training for nearly ten years. Our comprehensive training has been provided to many large commercial and government organizations, to include the City of Chicago, Ingredion Corporation, AutoNation, Kimberly-Clark, and multiple branches within the US Department of Defense. Trainings include custom fit solutions for all major technology categories, in addition to technical training programs for Microsoft, Cisco, Citrix, CompTIA, VMWare and many others. Our professional development sessions help private and government employees enhance their skills in communication, public speaking and presentations, project management, and more. This training also includes flexible options, state-of-the-art delivery, dynamic leadership, and an infallible dedication to students. Students can attend live, instructor-led training at multiple learning centers located across the country, virtually from the comfort of their home or office, or we are able to provide certified staff to conduct onsite training at a local facility. Additionally, Members have the ability to work with their dedicated CDW-G account manager to create a custom course at the time of your choosing or select from an array of times and dates for virtual training that are offered on a regular basis to many of our customers nationwide.</p>
37	Describe any technological advances that your proposed products or services offer.	<p>As a leader in technology solutions, we witness the "The Law of Accelerating Returns" in real-time. And while we're always looking for a partner to nerd out with on the latest tech (how about Tello, this terrific drone made by DJI that helps teach STEAM in schools to the next generation of programmers; check it out here: https://www.cdw.com/product/dji-tello-edu-720p-hd-programmable-drone/5557972), we also know there's so much else for Sourcewell and its members to do in serving the public interest. That is why Sourcewell's ideal partner will need to have its ear to the ground to be aware of all technological advances and cool new products that are out there, and also the practical understanding of how they benefit Sourcewell members.</p> <p>Here are a few select technology advances in CDW-G's catalog and how they benefit Sourcewell members:</p> <p>VR</p> <p>VR (Virtual Reality) at CDW-G has evolved quickly to keep pace with this rapidly changing market in order to provide the most current and up to date technology available today. VR is being used as a training application for Sourcewell members charged with educating and keeping us safe and healthy. In education, VR is used to engage children by taking them on an exploration or showing content in 3d with animations. Law enforcement uses VR in training to increase empathy in officers. Military applications are providing safer ways to train troops in a variety of situations. And this immersive technology is rapidly finding new use cases in medicine for evaluating tumors in 3d and even performing surgeries remotely.</p> <p>CDW Blueprint to Design™</p> <p>We offer a value-added modern learning environment design service to help make sure educators' technology investments work together for a full learning experience. Our design service includes classrooms, media centers, cafeteriums, and STEM/STEAM labs, and comes from our experts in classroom and spatial design. Since it began in September 2017, CDW Blueprint to Design™ service has had more than 800 K-12 and Higher Education institutions sign up for the value-added service.</p>

while delivering approximately 450 completed design packages for our customers.

Drones

Sourcewell members in law enforcement, education, and federal government can benefit from CDW•G's drone solutions, along with high tech imaging solutions such as thermal, recognition and infrared. We recently saved a large railroad customer time and money by replacing their manual approach of photographing miles and miles of railroad track by horseback (really, still horseback!) with a drone technology solution.

Cloud in the classroom, the right cloud solution can improve innovation. Out of the classroom, the right cloud solution can deliver cost savings, enhanced performance, and, if deployed effectively, increased security. A recent survey showed 59% of IT professionals say they would make more use of cloud, but the complexity is holding them back. CDW•G's cloud experts help customers understand and efficiently procure this elusive technology by answering such questions as: What are we buying? Where is our data going? How is it helping us? CDW•G currently partners with more than 150 cloud providers to deliver SaaS, IaaS, and PaaS solutions. And if those acronyms seem a little odd or unfamiliar, we've got that covered, too. Our expert cloud team, nearly a decade old, includes solution specialists to explain how cloud works, and assess the benefits and risks of each solution for Sourcewell members' particular needs and environments. Additionally, to make sure we are keeping up on "The Law of Accelerating Returns," CDW•G has resources in place dedicated specifically to monitoring IT trends, technical roadmaps, and emerging technologies. We combine this knowledge with the feedback customers provide to stay ahead of the curve on emerging technologies. Our OEM partners recognize us as a trusted partner when it comes to innovation. VMware recently awarded us with a Partner Innovation Award for the Empower Digital Workspace global award.

We ensure we offer state of the art technologies, and that we also vet the benefits and the risks of new solutions, and their operability in the Member's environment. CDW•G has several forums and encourages customers to share knowledge and best practices regarding the solutions we provide. The CDW Customer Advisory Board is a private, online community where we research IT topics and find out about technology usage to aide in marketing material development. These community members do engage with one another on relevant topics that they face in their environments. Sourcewell members have the opportunity to join this community if they desire. Highlights of the Customer Advisory Board include:

- 1,250 customers in a variety of industries
- Members are primarily: IT Managers, IT Directors, IT Executives/C-Level
- Weekly Topics include: IT Spending budgets, Tech conferences, Customer service, Social Media, Go

Green

The following are various other forums in which customers review CDW•G solutions and

- LinkedIn: <https://www.linkedin.com/company/cdw>
- Facebook: <https://www.facebook.com/CDWCorporation/>
- Spiceworks: <http://community.spiceworks.com/pages/CDW>
- Twitter: <https://twitter.com/CDWCorp>
- YouTube: <https://www.youtube.com/user/CDWPeopleWhoGetIT>
- <https://www.youtube.com/user/CDWTEchvision>

- Reviews on CDW.com: http://www.cdw.com/content/about/cdwreviews.aspx?cm_sp=Footer_-_

HowWeDolt_-_Customer+Reviews As a testament to our efforts, we are also regularly asked to participate in OEM advisory board and product beta-testing initiatives. We have been participants in such programs for Microsoft, Adobe, Symantec, IBM, Trend Micro, McAfee, CommVault, Quest, VMware, Cisco, Juniper, Sonicwall, and Riverbed. These organizations have relied on the input and feedback of our staff to ensure their products are market-ready, prior to their public release. For example, CDW•G participates in the majority of Microsoft Rapid Deployment Programs (RDPs) and Technology Adoption Programs (TAPs). This early exposure to Microsoft solutions enables us to bring solutions to our customers in a timely fashion and ensures successful implementations. And CDW•G was one of two partners worldwide who participated in the Early Field Trial (EFT) of Cisco's UC 8.0 rollout. We were developing on the software nine months prior to public release. When 8.0 was released to the public, all CDW•G engineers were already trained to deploy the solution and were familiar with known differences from prior versions. Added to our OEM expertise and advanced solutions, CDW Technology Support is our branded offering backed by the OEM collaborative warranty support service. CDW•G will take the first call for Members to help resolve their issue and, if needed, provide an engineer onsite to perform a hardware replacement. If escalation to the OEM is required, CDW•G will do that on the Member's behalf. Because of CDW•G's depth and breadth of expertise, in the case of a Cisco solution, we are able to get a top-level TAC engineer more quickly than a Member can, resulting in quicker incident resolution.

For more information, please see our Additional Documentation uploads.

38	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	<p>As an IT reseller we do not build the products we sell (though we make green technology solutions clearer, and for more information on this please see our response to Question 39).</p> <p>We do recognize our part in responsible environmental management and conservation of resources. One of the ways we demonstrate our commitment to environmental management and the principles of sustainable development is through our beGreen program. The beGreen program, which has been around more than 10 years, provides CDW•G coworkers with a platform to reduce, reuse and recycle in an effort to make our operations leaner, more efficient, and more environmentally responsible. We continually develop these efforts to comply with ISO 14001 standards.</p> <p>Since we kicked off beGreen, CDW•G has seen overwhelming coworker participation. Coworkers have the improved environmental efficiency led to these two actions: 1. Our Las Vegas Distribution center has 2. Our Vernon Hills Distribution Center updated the warehouse and parking lot with LED lights containing motion sensors. This allows us to reduce our power usage while minimizing our impact to the environment. beGreen is a consideration in everything we do. Our downtown Chicago office is moving in the next few years to accommodate our growing company. Similar to the products we sell, we don't build the buildings we work in. But we do recognize our part in environmental responsibility and that is why our future office location is LEED certified for its design and construction. Select beGreen program highlights are below. For our full environmental policy and commitment, please see "CDW•G Commitment to the Environment 2019" in the Additional Documentation uploads section. ISO 14001:2015 Certification CDW•G's distribution centers are ISO 14001 certified, which is the internal standard for environmental management systems. This certification has been awarded to CDW•G's distribution centers located in Vernon Hills, IL, and North Las Vegas, NV.</p> <p>Sustainability at CDW Lighting & Energy Management. Our offices and Distribution Centers are outfitted w waste power after hours.</p> <p>Eco-friendly Alternatives. Our cleaning crews also use natural and vinegar-based cleaners in place of chemical cleaners that can be harmful to the environment.</p> <p>Coworker Engagements. CDW•G Illinois locations are past winners of the Illinois Governor's Sustainability Award, recognizing private and public Illinois organizations who have implemented outstanding and innovative sustainable techniques or technologies, demonstrating a commitment to sustaining our environmental, social and economic health.</p> <p>Recycling Our Distribution Centers employ programs that are designed to recycle corrugate, shrink wrap, from a peak of three times a week to only twice a year. Packaging and Transportation Over 95% of of manufacturer packaging, instead of being repackaged in new boxes. We have also redesigned our box e maximize the amount of product put into each box.</p>
39	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	<p>Sourcewell members in the public sector have a responsibility to procure sustainably. As stated in Question 38, none of the products we sell are manufactured by CDW•G. Which is a benefit to Sourcewell members. This allows us to be more objective about what's right for each Member's initiatives. Since green products, energy efficiency, life-cycle design, and other sustainability factors are important to Sourcewell members, our account managers compare the various OEMs we sell and determine equipment and products that support their goals. We do try to help where we can. For example, though CDW•G has our own internal policies regarding recycling, we do not take back old equipment from customers. However, we can direct Sourcewell members to trade-in and asset disposal programs through partners to help properly dispose of or recycle hardware.</p> <p>These are some of the programs we offer Sourcewell members:</p> <ul style="list-style-type: none"> - NEC Program: https://www.necdisplay.com/communications/0418_TradeIn_TradeUp_Program.html - Panasonic: http://panasonic.anythingit.com/ - ClearCube: https://www.clearcube.com/upgrade - PlanITROI: https://planitroi.com/

40	<p>Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.</p>	<p>Sourcwell members in the public sector promote diversity and local business initiatives through their procurement requirements. There are many types of diverse supplier requirements, including minority- and woman-owned, small business, veteran-owned businesses, and LGBT-owned businesses. Sourcwell's ideal partner on this contract will empower all types of diverse suppliers in the marketplace, not just one or two.</p> <p>CDW-G does not hold any WMBE, SBE, or veteran-owned business certifications. Our focus lies in creating a meaningful sourcing plan with minority, small, local, veteran-owned, and other diverse suppliers. By not being a diverse prime, we have the privilege, opportunity, and responsibility to partner with diverse suppliers and bring them with us to the Sourcwell opportunity. That's part of the CDW Experience. Through data extracted from the BLS Quarterly Census of Employment and Wages, we estimate the economic impact from our U.S. supply chain supported over 5,800 Diverse and 3,600 Diverse Small Business Enterprise American jobs in 2018. Also, in our experience customer diversity initiatives are not always met by one or two specific certifications. Each customer has different goals and CDW-G is an ideal partner because our diverse supplier network contains partners with the following certifications:</p> <ul style="list-style-type: none"> - Minority Business Enterprise (MBE) - Women Business Enterprise (WBE) - Lesbian Gay Bisexual Transsexual Business (LGBT) - Veteran Business Enterprise (VBE) - Disability Business (USBLN) - Women Owned Small Business (WOSB) - Small Disadvantaged Business (SDB) - Veteran-Service Disabled Veteran - Small Business - HUBZone <p>We launched our Supplier Diversity program over a decade ago. Our leader in Supplier Diversity, Kristin Malek, was named one of DiversityPlus Magazine's Top 25 Women in Power Impacting Diversity 2019. Kristin and CDW-G coworkers participate in workshops designed to help diverse suppliers learn about contracting opportunities. Recently they attended an event with the City of New York that attracted over 60 diverse suppliers. In recent years, CDW-G has seen continued increases in diverse spend since the program's inception. 2018 overall reported diversity spend exceeded \$2B, equating to 12% of our organization total spend with suppliers. In the same year, we were named a Finalist by the National Minority Supplier Development Council for Corporation of the Year. In 2019, we were named US Veterans Magazine Best of the Best Supplier Diversity Program. Please see a letter of recommendation from QnA Tech, a small minority owned firm focusing on IT solutions, as further, real-world evidence of our commitment to working with diverse suppliers.</p> <p>CDW-G can offer Sourcwell members partnerships in one of two ways: The Tier I Program</p> <p>CDW is continuously developing other diverse partnerships to meet customers' Tier I needs, which is where customer spend goes directly to the diverse firm. In fact, we offer an online registration tool where businesses can register for future opportunities with CDW. Our growing list of suppliers means that customers can count on CDW to deliver against their diversity spending targets. CDW has also partnered with MBE/WBE leasing companies that can support customers' Tier I spend requirements.</p> <p>The Tier II Program In an effort to foster even more opportunities for small, diverse businesses, CDW launched a Tier II Supplier Diversity Program in 2009 for its key manufacturing, distribution and logistics partners. The program's goal is simple: to further opportunities for competitive diverse companies to supply goods and services to CDW and deliver them to our customers. CDW also provides Tier II reporting to customers that track their spending (typically for tax incentives), ensuring that suppliers meet contract compliance and obligations. Our Tier II reports show the items that CDW purchased from diverse suppliers, all items that our customers purchased from CDW, and all items that CDW purchased from diverse suppliers to fulfill customer orders directly.</p> <p>One more important aspect of the CDW Supplier Diversity program is our support and participation in various organizations and events focused on developing relationships and business opportunities within diverse communities. CDW is a National Corporate Member of the National Minority Supplier Development Council, Inc. and The Women's Business Enterprise National Council. CDW supports other organizations, such as the Chicago Minority Business Development Council, Inc., the Women's Business Development Center of Chicago, the Minority Business Development Agency of Chicago, the National Veteran Owned Business Association, and the National Gay & Lesbian Chamber of Commerce. Not only does CDW contribute financially to these organizations, we also engage on advisory councils, attend and host events, and provide resources to support the organizations' focus on continued growth and success.</p>
41	<p>What unique attributes does your company, your products, or your services offer to Sourcwell Members? What makes your proposed solutions unique in your industry as it applies to Sourcwell members?</p>	<p>When Sourcwell evaluates vendors for this next Technology Solutions Catalog contract, we suspect many of the product and services catalogs will overlap. That's life at the top of the IT solutions market, we suppose. But how many of these vendors can stand apart and point to unique solutions? Unique in the true sense of the word. CDW-G stands apart with the following unique attributes we offer Sourcwell members: Sales Support CDW-G's Sales Academy equips new sales coworkers with the skills and knowledge necessary to be effective, successful, and consultative extensions of your IT staff. The Sales Academy is a five-and-a-half-month curriculum for Public sector, Corporate, and Small Business sales account representatives consisting of three phases: Phase I: offers a classroom environment focused on immersing account representatives into the CDW-G culture, systems, technology and professional selling skills Phase II: provides an opportunity for account representatives to immerse themselves into CDW-G segment specific training as well as practice their skills. Phase III: account representatives work with CDW-G customers while continuing their development with dedicated coaching and trainings from a top performing sales leadership and coaching team</p>

Our experiential learning curriculum uses a complete blended delivery model including classroom activities, eLearnings, one-on-one coaching and roundtables, and the Sales Academy delivers that and more. Sales team shadowing and real-world assignments prepare account representatives for the reality of day one on-the-job. In addition, account representatives are provided cutting-edge resources such as a searchable online help tool. CDW•G has implemented a measurement strategy to ensure that any account representative graduating from the Sales Academy is able to perform job tasks and responsibilities skillfully. This strategy includes exercises, assessments, and tests. Throughout each phase of the Sales Academy, account representatives are coached to understand and address the unique challenges within their focus segment: K12, Higher Education, State & Local Government, or Federal Government. We understand that each customer and segment are unique and feel that our training should mirror those nuances. All of these components—technology training, system training, on-the-job immersion, and segment focused coaching—combine to create an onboarding experience for new account managers that has the right balance of technology acumen and real-world skill development and practice. Our goal is that each account representative is able to serve as a valuable asset to our customers—helping them to address their challenges and meet their goals through technology. Our salesforce is trained to understand and support the broad portfolio of products and solutions that CDW•G offers. We also understand our customers' need for deep expertise on particular products and solutions. That is why our account teams are supported by a large team of more than 100 presales systems engineers, both CDW•G-badged and vendor-funded positions, who provide presales support for specific lines of business and particular partner's products. These experts assist with evaluating products based on your unique operational requirements and budgetary constraints. They review quotes for product compatibility, functionality, and compliance. Your account representative will still serve as your main point of contact and quarterback the project to make sure that the process is simple and seamless for members.

E-Rate

CDW•G is proud to have participated in E-Rate Projects for Category 2 since 1998, when our company was founded. During that time, we have been awarded over 14,000 E-Rate projects totaling over \$200M in total internet connectivity solutions to schools throughout the United States. Due to our streamlined and best-practice system of checks and balances, we ensure our E-Rate customers have a collaborative and positive experience when working with us on their E-Rate projects, including our dedicated E-Rate invoice team who ensures expert handling of both BEAR and SPI E-Rate invoicing. Mark Ellis, Manager, Program Management, David White, Program Manager, and Amy Passow, E-Rate Specialist, offer schools their knowledge, assistance, and advisement on E-Rate matters, including but not limited to Program compliance and adherence. David prepares contract deliverable reports and makes modifications, as necessary, including price reductions, additions, discontinued products, replacements, and version changes. He ensures that price and supply agreements are in place from award through completion and that the E-Rate bidding, ordering, invoicing, and funding are all seamless and easy for entities to complete. Amy advises on the appropriate engagement before and after Form 470 filings and works with our operations teams to ensure E-Rate ordering, invoicing, and delivery are compliant; additionally, Amy assists applicants with PIA reviews and preparation of Item 21 Forms as part of the Form 471 process.

eSports We know the world of eSports is growing fast. The estimated annual total revenue that will be experienced with gaming laptops and desktops, gaming monitors, mice and keyboards, gaming headsets, graphics cards, and furniture. We feature key manufacturers for this burgeoning industry such as iBuyPower, Logitech G, Micro-Star International (MSI), PNY.

Public Safety In 2007, CDW•G's Public Safety Team was chartered with the mission of aligning the IT industry around the unique challenges of law enforcement, fire, and emergency medical customers. We are proud of its history within the public safety community and long-standing relationships achieved through partnership, membership, leadership and sponsorship with local, regional and national associations. CDW•G participates in public safety focused conferences and events, helps deliver training and education, and works together with organizations including the International Association of Chiefs of Police (IACP), the International Association of Fire Chiefs (IAFC), and the National Sheriffs Association (NSA). Our relationships and targeted expertise afford us with a unique platform to expand Sourcewell's reach into previously untapped markets.

One such relationship is with the National Sheriffs' Association (NSA) that support over 3,100 Sheriffs offices nationally. In 2018, NSA wanted to provide an on-line marketplace portal for everyday goods and services to its members. They solicited the industry to develop the portal, and selected LESupplyPro (LESP), a law enforcement focused cooperative, as a partner, and began development of the marketplace. While working with NSA, the CDW•G Public Safety team noticed there was no technology category in the NSA-LESP portal offering. The team was able to educate NSA on the value and benefits of the Sourcewell agreement, and through these efforts, NSA and LESP named CDW•G as the exclusive technology partner on their NSA-LESP contract. This customized Sourcewell agreement has expanded Sourcewell adoption and membership into a new market while also providing a tailored contract structure that gives back to local law enforcement agencies and helps them further support their mission—serving and protecting citizens. Looking forward, CDW•G envisions continuing to increase the number of members accessing Sourcewell's CDW•G contract by using our unparalleled reach and segment focus to penetrate new markets and maximize Sourcewell's overall contract adoption.

K-12 Education Strategy Team

In response to the increasing complexities that schools face scaling digital learning, CDW•G has

		<p>created a K-12 specific Education Team made of former educators and experts.</p> <p>Collective Previous Experience</p> <ul style="list-style-type: none"> - Chief Information Officer - Certified Project Management Professional - Google Certified Innovator and Trainers - Google Certified Level 1 & 2 Educators - Google Apps Certified Administrator - Google Apps Certified Deployment Specialist - Teacher of the Year - Instructional Technologist - Learning Environment Advisor - Microsoft Innovative Educator Trainer - Microsoft Expert Educator - Classroom Teacher - District Superintendent - Developmental Reading Specialist <p>Our K-12 strategy team analyzes research from multiple experts in the education technology industry such as ISTE, CoSN, Future Ready Schools and the 1:1 Institute (The Project Red Report) in order to develop an internal tool for guiding school districts through curriculum, professional development and device implementations. On a recent past project CDW•G assisted an eastern school district with setting up a STEM Academy for the following school year—resources, materials, products, lesson resources. As a no-cost program, Sourcewell CDW•G saved the district between \$2,000-4,000.</p>
42	<p>Identify your ability and willingness to provide your products and services to Sourcewell member agencies in Canada.</p>	<p>CDW's significant presence in Canada, detailed in Question 25, allows us to focus on providing products, services, and local support to our Canada customers. CDW has a large Product & Marketing organization in Canada. This team comprises mainly Partner Managers, who support 1000+ vendor relationships, including their new technology launches and associated promotions. We have coworkers dedicated to meeting with, evaluating, and onboarding new Sourcewell members. Similar to in the United States, we also have onsite vendor specialists for larger partners such as Adobe, Cisco, HPI, HPE, Lenovo, Microsoft, and more.</p> <p>Our business model in Canada provides exceptional product availability and quick turnaround from the largest inventories of top brand-name manufacturers in the industry. We attribute this to our strategic relationships with the industry's top distributors. There are several main distribution partners in Canada, including Tech Data and Ingram Micro, all of which CDW Canada has a direct line of communication with through a dedicated CDW resource. CDW Canada strives to ship all in-stock, credit approved, non-configured orders within 24 business hours of P.O. receipt. Historically, our same-day order fill rate has been 97%-99%.</p> <p>Our recent acquisition of Scalar Decisions Inc., one of Canada's largest technology solutions providers, enhances the value that we deliver in Canada in the following areas: professional services, security, infrastructure, and cloud technology.</p>

Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *
43	<p>Do your warranties cover all products, parts, and labor?</p>	<p>CDW•G does not manufacture products, but Sourcewell members' IT investments are covered by the manufacturer's standard warranty for all purchases. This means that terms of warranty coverage can and do vary with each OEM purchase. Details for each product warranty are on www.cdwg.com or available through members' dedicated account manager. In our experience, most often the manufacturer coverage does just fine. But for those times where some added support is desired, CDW•G offers additional warranty coverage options for products whose standard warranty alone does not meet members' needs. In order to understand all of our best-value options, we recommend members work with their trusted account manager to navigate the options in our extensive catalog and determine the best fit warranty solution for each product and circumstance. For example, CDW•G and most resellers offer a whole lot of different OEMs—we understand that's one of the features customers and cooperative agencies like best about doing business with large IT resellers. But a whole lot of different OEMs and a whole lot of different warranties could lead to a significant time investment for Sourcewell members when left to manage this part of the technology lifecycle on their own. Imagine for a minute Sourcewell members with small IT staffs left to analyze and track dozens of programs and expirations to gain the most value from their portfolio of warranties. In these instances, CDW•G can offer Maintenance Contracts to simplify warranty coverage for members bogged down with a collection of warranties from different manufacturers for different lengths of time and each with a different end date. Maintenance Contracts are an easily manageable service contract that covers all IT equipment, regardless of manufacturer, with just one expiration date and a single point of contact for repairs. Please refer to our document upload in this section for more information on Maintenance Contracts.</p>

44	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	<p>Rather than imposing usage restrictions or other limitations on our warranty services, CDW•G enhances coverage options for Sourcewell members through our warranty extensions and uplifts. As stated in Question 43, our experience is that many customers choose the standard OEM warranty for their purchase. Which is fine. In instances where the OEM warranty isn't sufficient, CDW•G offers competitive solutions to augment the OEM's warranty to minimize risk and ensure ongoing performance. Included in our portfolio:</p> <ul style="list-style-type: none"> - Warranty extensions and upgrades - Post warranty support - Accidental damage protection - Maintenance Contracts - Post-sale technical support - Product and certification training - Onsite repair - Help desk services <p>Additionally, understanding best-value procurement does not stop at the sale, CDW•G keeps the communications lines open with our customers to be sure the warranties they hold continue to meet their needs. For instance, shortly after award on a U.S. Marine Corps (USMC) BPA, CDW•G recognized the warranty provided was not offering the level of service required for USMC. We replaced this warranty without any impact to the customer, indicative of the reliability of our quality approach and our focus on upholding our commitments.</p>
45	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	<p>Some do and others do not; it depends on the warranty coverage selected. Any incremental warranty costs for technicians' travel time and mileage to perform warranty repairs are disclosed at time of quote. Both standard manufacturer warranties and extensions of OEM warranties are typically inclusive of all warranty repair services being purchased. In some instances, services may fall outside of the OEM warranty options stated above. In these specific cases, services performed need to be outlined within a statement of work (SOW) and mutually agreed upon by all parties. If so, there will be very specific language around such warranties, travel time, and mileage for any on-site work. However, in our experience SOW-based services are not typically warranted.</p>
46	Are there any geographic regions of the United States (and Canada, if applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell Members in these regions be provided service for warranty repair?	<p>As mentioned, it depends on the warranty coverage selected. In most cases, warranty support is fulfilled directly by the manufacturer and coverage will vary on a case-by-case basis. Where Sourcewell members opt to enhance the standard manufacturer warranty, we have access to certified technician resources through in-house technicians and strategic local partnerships that cover the United States and Canada. We will work with Sourcewell members to identify the best-value solution. Response times and SLAs can vary by location. A commitment we make to Members is that they will always know what they are buying and have clear instructions on the coverage and how to activate warranty claims, whether they be on-site, depot repair or mail-back programs, we believe in complete transparency of the service.</p>
47	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	<p>In those instances where Sourcewell members choose the standard manufacturer warranty, the responsibility for warranty services on those items is with the manufacturer. To ensure manufacturer warranty expectations are met, CDW•G has defined escalation processes with our partners to ensure technical support is provided by the manufacturers according to the agreed upon SLAs. In those instances where CDW•G enhances the standard manufacturer warranty, we take responsibility for meeting SLAs and delivering the full customer experience.</p>

48	What are your proposed exchange and return programs and policies?	<p>Should Sourcewell members need an exchange or return, CDW•G requires a Return Merchandise Authorization (RMA) number for all returned merchandise. All products must be returned one hundred percent (100%) complete, including all original boxes, packing materials, manuals, blank warranty cards, and other accessories provided by the manufacturer. All returns should be initiated within 30 days. For returns initiated after 30 days, fees may apply. However, in all instances when CDW•G makes an error, we will cover return costs. Credit is issued the following day after the product is received into our warehouse. Credit form is based on the initial method of payment. Credit card refunds will be issued back to the credit card. Net terms refunds will be placed on the account for the customer to use towards invoices or they can request a check be sent to them. For full information on our return programs and policies, see CDW's full Product Return Policy at the following link: https://webobjects.cdw.com/webobjects/docs/PDFs/Return_Policy.pdf For all questions, issues, and concerns, Sourcewell members' CDW•G account manager continue to be at the center of the customer service and support experience. By contacting their account manager to initiate the return process, Sourcewell members will receive individualized support that ensures the best outcome. CDW•G account managers—and our customer support teams—facilitate and track all returns. These coworkers deal with RMAs on a daily basis. And when returns cannot be made to CDW, Members in need of advocacy with manufacturers regarding exchanges, returns, or any aspect of their IT investment can count on their CDW•G account manager to advocate for them with the OEM. CDW•G also offers Customer Relations service at 866-SVC-4CDW or via email at customerrelationsreturns@cdw.com for customers to obtain a Return Merchandise Authorization (RMA) before shipping product back to CDW•G. Added to our programs and policies, Sourcewell members can trust that they are receiving the approved OEM warranty with each purchase through CDW•G's secure supply chain. 99% of our products come from authorized sources, with the other 1% customer requested sources. Once products are received at our distribution center they are investigated and tracked according to the return merchandise authorization number assigned to each order. The end user/customer is then notified that receipt has been confirmed. All of CDW•G's shipping and quality processes are based on the ISO 9001:2008 certification standards.</p>
49	Describe any service contract options for the items included in your proposal.	<p>In addition to services included with purchase, Sourcewell members may choose from a range of service options available through CDW•G (fees may apply), including the following:</p> <ul style="list-style-type: none"> - We offer a collaborative warranty support service backed by select valued OEMs for faster resolution and a more personal experience. For Sourcewell members' software, licensing and hardware devices, CDW•G takes the first call to resolve the issue and, if needed, provides an onsite break/fix replacement. If escalation to the manufacturer is needed, CDW•G does that on the members' behalf. - We offer through our strategic partners an extended service/help desk, where a phone number is provided and we can take calls and provide support. This option is useful for Members who may not have a robust IT support program and seek a 3rd party solution. - We offer tech support (U.S.-based help) for five years from purchase through either phone or chat (M-F, 7am-6pm CT), or email (reply within 24 hours). - We offer CDW Product Protection through Safeware, a fully licensed insurance agency as well as a Third Party Administrator. Services feature extended warranty and service plan solutions, covering many types of hardware products, including laptops, tablets, and printers/scanners. - We offer Cisco SMARTnet Service, an award-winning technical support service that give members' IT staff direct, anytime access to Cisco experts and online self-help resources required to resolve issues with most Cisco products. Our dedicated Cisco SMARTnet team has 50 specialists with years of experience working with SMARTnet contracts. We have in-depth knowledge of Cisco's internal SMARTnet tools. And CDW•G's exclusive web portal, SMARTtracker, will streamline the management of your SMARTnet Total Care contracts 24x7x365, not just at renewal time. SMARTtracker is a key strength of our offering that provides value-added benefits when combined with the expertise and support of our SMARTnet Total Care Specialist Team. - We offer a Software Asset Management (SAM) solution powered by Snow Software hosted in our cloud through a subscription. This productivity enhancing tool is an advanced and user-friendly SAM solution that empowers customers to reduce their licensing expenditure while mitigating the various compliance risks associated with the administration of software agreements.

Payment Terms and Financing Options

Line Item	Question	Response
50	What are your payment terms (e.g., net 10, net 30)?	CDW•G's standard payment terms are net 30 days from the date the invoice is issued.

<p>51</p>	<p>Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?</p>	<p>Yes, Members have access to a diverse portfolio of financial companies that can help them secure the leasing terms that best fit their specific needs and budget requirements. CDW•G offers 16 premier and preferred leasing partners, including Arrow Capital Solutions, Cisco Capital, Dell Financial Services, HP Financial Services, and VAR Technology Finance. While we always view our deep set of options as a boon to our customers, we also understand our customers and their IT departments might have better things to do than evaluate multiple leasing constructs to select the right one. CDW•G's approach to leasing and financing solutions mirrors our approach to technology solutions in this way: listen, advise, assist, and present the best options. For example: Apple Financial Services almost always makes sense for Apple products. Our account managers, as the trusted first point of contact, work with members to identify those options. This collaborative process includes the following specific steps: 1. An initial discovery session to understand member goals, requirements, and budget 2. An assessment review of members' existing environment and definition of project requirements 3. Detailed vendor evaluations, recommendations, future design, and proof of concept 4. Procurement, configuration, and deployment of the final solution Our diverse portfolio offers Sourcewell members the option to lease virtually any IT product at favorable rates and terms. These options can be available on a per-deal-basis, or in many cases, as a primary billing option. If a member has a preferred leasing company that is not currently one of our 16 partners, the account manager can work to set that partner up. For example, we have partnered with National Cooperative Leasing (NCL) by onboarding them as a leasing option for our Sourcewell members and continue to develop this partnership. We have begun the plans of putting together a Leasing Planning Meeting between NCL and the CDW•G Leasing Team to build out a collective strategy for our customers asking for leasing in relation to this Sourcewell agreement. Sourcewell members will also receive a value-added resource in CDW•G's Financial Solutions Team. This is an internal team of unbiased financing experts that work in conjunction with the account manager to align payment options with the Member's financial goals. For example, we know a recent trend for our education and government customers is to adopt mobile devices for their employees and students. However, recent research suggests IT managers believe they spend too much money and time managing devices, including ones that go unused when an end user transfers out of the agency. Our team can recommend an innovative solution for these customers through device-as-a-service (DaaS). While not a traditional leasing or financing option, DaaS satisfies many of those objectives, and includes warranty support, device management, real-time monitoring, and at the end of the lifecycle the devices will be available for reuse or recycling. Less knowledgeable, specialized resources may not consider an option such as this, or—shudder—even be aware it is an option.</p>
<p>52</p>	<p>Briefly describe your proposed order process. Include enough detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the Sourcewell Members' purchase orders.</p>	<p>Sourcewell's 50,000 members are a diverse bunch and should be able to procure IT in the way that suits them individually. As part of the CDW Experience, we strive to make this possible. Members can place an order through the custom premium contract page we set up unique to each Member organization; Members can place an order through their account center feature at www.cdwg.com; or, because we know IT can get a little complex at times and it may seem we have a bajillion options, Members can pick up the phone and dial their dedicated account manager, who is always happy to chat and place an order that way. There are benefits to each method. For example, in Members' premium page, they will see the contract price in real-time as it takes into account market discounts and other factors. For online ordering, we can set up a demonstration to make sure that Members are familiar with the functions and benefits of their customized system. By placing a phone call, Members can bounce their needs, wish lists, concerns, or heck, even ideas for a home improvement project off their dedicated account manager trained in CDW•G's products and services. Once the order is placed through any of the above methods, it goes through a number of quality control steps to ensure what's received is what was ordered.</p> <p>First, the order is reviewed for accuracy by Members' CDW•G account team. Once confirmed, it is sent to our Credit Department for approval and credit-release. The member will receive immediate confirmation via email. In addition, real-time order status information is available 24 hours a day on Members' CDW•G Account Center. The order status feature enables Sourcewell members to sort orders by status: open, completed, backordered, and cancelled.</p> <p>After the order is credit-released, it is sent to the Purchasing Department to have the product pulled from stock, or, if the Member has a Staging Agreement or planned roll-out, it comes from the Members' dedicated inventory. Members benefit from the fact that CDW•G has two strategically-</p>

		<p>located distribution centers that hold \$220M of inventory, on average. At any given time, we maintain 1-4 weeks of stock supply ensuring items are consistently in stock for rapid deployment.</p> <p>CDW•G's distribution centers are designed for continuous commitment to accuracy, quality, and speed. Each step in the product movement process is verified with a barcode scan, from receiving through shipping. We ship 40,000 to 50,000 boxes per day depending on the time of year. Our facilities have multiple levels of storage, miles of high-speed conveyors and sorters, UPC bar code scanning, product serial number capture, and—well, so this is one of those times where things in the technology procurement process get a little complex. Should we just leave it at our shipment accuracy rounds up to 100%? Or, we invite you to take our nifty virtual tour:</p> <p>https://www.cdw.com/webcontent/hubs/services/CDW_DistributionOverview_g.html</p> <p>As one of the largest direct marketing resellers in the U.S., CDW•G has positioned itself very closely with the major shipping companies and other delivery service companies to provide standard or expedited product delivery. Due to the extensive carrier worldwide service capabilities, excellent record for on-time delivery, and competitive pricing, we ship the majority of our products via UPS or FedEx. Both companies have onsite employees at our distribution centers, individuals with a track record of supporting CDW•G with sophisticated capabilities to leverage their intermodal transport options. We also have contracts with truck load (TL) and less than truck load (LTL) carriers for large orders and heavy products.</p> <p>For orders using the Sourcewell contract's terms and conditions, the Sourcewell contract is identified at the line item level or on the Statement of Work, and this triggers our Contract Editor system (Please see our response to Question 63) to ensure the sale is captured as a contract sale and our internal controls go to work. The Sourcewell Member receives invoice detailing Sourcewell contract has been used and this leads into reporting.</p> <p>For managing the contract and providing quarterly sales reports, Sourcewell has a post-award process. Other companies often leave contract management to the outside of the scope of the RFP erroneously being purchased through this contract. The reports that our contract management professionals currently generate run the gamut from quarterly sales reports for Sourcewell to highly manual, daily federal reports. We have been sending these for the past 20-some quarters on the current contract, and are available to meet with Sourcewell to review any details and answer questions, as needed, Sourcewell and its members will continue to benefit from CDW•G's exacting, on-time reporting standards.</p> <p>CDW•G will not be using a dealer network as part of our response.</p>
53	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell Members for using this process?	<p>Yes, Sourcewell members can use P-cards in both eProcurement and non-eProcurement orders. There is no additional cost for using this process. However, Members who opt for payment terms (e.g. Net 30) are not then allowed to settle terms by invoice with a P-card. As an added capability at no additional cost, CDW•G is capable of providing level 3 information on P-Cards for Visa, MasterCard or American Express. This service provides line item detail remittance of the transaction on member cardholders' statements. Level 3 allows the member agency to track expenses and to ensure that the products purchased on its card were in fact legitimate purchases.</p>

Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *
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54	Describe your pricing model (e.g., line-item discounts or product-categories materials (if applicable) in the document upload section of your response.	<p>To ensure Sourcewell Members can easily procure technology products and services at competitive discounts, CDW•G offers pricing in the same simplified model that Sourcewell members are familiar with on the current contract: Percentage discount off CDW•G Nationally Advertised Price (Advertised) for technology products and services categories, available at www.cdwg.com. We believe the best solutions are simple to price, simple to sell, and simple to implement. Though Sourcewell members will be able to choose from over 100,000-strong technology product catalog, CDW•G makes understanding the discount and pricing Members will receive simplified by organizing our diverse catalog into 25 commonly recognized item categories: Accessories, Power, Cooling & Racks, Desktop Computers, Data Storage/Drives, Enterprise Storage, Point of Sale/Data Capture, Servers & Server Management, Notebook/Mobile Devices, NetComm Products, Carts and Furniture, Printing & Document Scanning, Services (Partner Delivered), Software, Collaboration Hardware, Video & Audio, Cables, Warranties-Product Protection, Video Hardware, Interactive Whiteboards, Interactive Flat Panel Display, Chromebooks, Google Chrome Management SaaS, Apple products, and Amazon Web Services. Special pricing and extra discounts we have secured through our close OEM partnerships are reflected in the percentage discounts calculated off Advertised. CDW•G publishes, maintains, and provides access to Advertised at www.cdwg.com as we do for other large-scale contracts and all of the open market business we transact. While we've seen some public sector customers prefer to use a discount off MSRP (Manufacturer's Suggested Retail Pricelists), the unique cost-savings Sourcewell members have come to expect from the current contract cannot be realized on the next contract with that type of structure. Using Advertised allows members to realize greater cost-savings due to a better dynamic price baseline driven by current market conditions and pricing trends. In general, there is a downward trend in IT hardware and software cost over time, and CDW•G's Advertised is benchmarked against current market demand as well as live pricing on our competitor's websites; it is then adjusted to remain competitive in the marketplace. One of the benefits of using CDW•G's Advertised is that it is available 24/7, and Sourcewell members can feel confident that pricing is both up-to-date and competitive, rather than a static number that does not accurately reflect the true market. A well-recognized example of volatility is when a new iPhone releases for \$699 and the one bought just yesterday suddenly drops in value from \$399 to \$99. A number of unique factors contribute to CDW•G's ability in setting a competitive price point.</p> <p>Volume CDW•G processes one order transaction nearly every three seconds. This volume makes us the largest multi-brand IT provider, giving members the broadest look at market trends – especially pricing. We know quickly when our pricing needs to be adjusted to remain competitive, and CDW•G's staff of pricing specialists and Product Management teams adjust accordingly.</p> <p>Sales Data Our sales systems show ordering trends by product, indicating slow evaluate our prices.</p> <p>Supplier Relationship CDW•G's strong supplier relationships provide aggressive pricing and forward-looking analysis. Our relationships with multiple providers give us a real-time look at 'alternate path' pricing. CDW•G's Advertised tracks and adjusts the prices on a large set of products on a weekly basis.</p> <p>Competitive Price Analysis Sourcewell can trust that contract pricing is competitive with other large-scale contracts. As stated above, by tying your discounts to the CDW•G's Advertised reference point, we ensure real-time competitive pricing for purchases over the life of the agreement. All of the products we expect Sourcewell to consider as part of this offer can be found at www.cdwg.com/sourcewell.</p> <p>Additionally, we have provided sales for Sourcewell members in Canada through our CDW Canada affiliate. The discounts are off CDW Canada Advertised price and are quoted in local currency (CAD). Categories of Canadian catalog are similar though not identical. Please refer to our Canadian pricing offer in the required Pricing document uploads for more information.</p>
55	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	CDW•G: 0% to 13% Discount off Advertised Price CDW Canada: 0% to 7.75% Discount off Advertised Price

56	Describe any quantity or volume discounts or rebate programs that you offer.	Sourcewell prices and percentage off discounts listed in our proposal are the ceiling price at QTY 1. It is our experience, both on the Sourcewell contract and across the broader scope of our business, that few purchases are made for QTY 1 and that often we can share additional discounts with customers through our close relationships with key OEMs. On the current contract, we advocated for Sourcewell members and secured volume discounts on a number of OEMs, including HP and Nutanix. By purchasing in volume or as part of a larger project, approximately 20% of Members enjoyed discounts between 10-20% below the contract ceiling price throughout 2018. Additionally, CDW•G maintains our two distribution facilities with over one million square feet of inventory space available. While our competition tries to paint these facilities as an unnecessary expense, they miss out on one of the key benefits of our model. CDW•G can regularly take action on strategic buy-in programs offered by distributors and OEMs as they feel pressure of product accumulating in their supply chain or need to attain a certain sales threshold for a financial milestone, such as their end-of- quarter or fiscal year. When these opportunities arise, CDW•G has adequate space available to buy in hundreds of units at a reduced cost—and we choose to blend that cost with the general inventory, driving down prices for Sourcewell members in the process. And let us say the ways and means of discount/rebate programs offered from competing vendors on this contract will certainly all sound appealing. But take note that without a team dedicated to tracking and managing purchases, and applying those special discounts appropriately, any resulting oversights will be as inexcusable as letting a puck slip through the five-hole. As part of the CDW Experience, we have a team of program management professionals, including a contract manager and contract analyst dedicated to Sourcewell, who ensure that Sourcewell members receive all program benefits.
57	Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.	Due to our routine partner reviews, we rarely run into having to onboard new vendors or products for specific requests. When we do, our scrupulous process ensures that new partners work with us in delivering the CDW Experience. This process features collaboration with customers, sales teams, distribution coworkers, internal analysts, Product and Partner Management teams, and our legal department. Again, this is one of those components of technology procurement that is extremely complex behind the curtain, but for Sourcewell members the benefit of working with CDW•G is simple: security. When sourced products or related services are needed, CDW•G can easily facilitate this process for Sourcewell members. In instances where an entirely new product or related service becomes available through our catalog, such as when we began selling AWS on the current contract, our Program Management team works with Sourcewell to add it to the contract at a reasonable percentage discount for Members, taking into account relative category discounts already established on the contract. As for facilitating related services, CDW•G has the resources to develop and deliver services that require nonstandard options, or unique scopes of work, pricing and specific terms. We work with our solution architects and partners to create these project scopes and provide a wide range of services. We then have a team of service contract specialists and service contract negotiators dedicated to drafting, editing, reviewing, and negotiating service contracts to meet the specific needs of our customers. In addition, CDW•G has legal resources to negotiate customer-specific terms and project-specific terms for our customers. The contracts team handles service contracts from initial drafting to full execution of a statement of work, ensuring the Sourcewell members' experience is streamlined and services can begin in a timely manner.
58	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	All costs to serve Sourcewell members are included in the pricing. Services are quotes as designed by the Member and may include training or implementation costs, which are included at the time of quote and never 'tacked on' after purchase.
59	If freight, delivery, or shipping is an additional cost to the Sourcewell Member, describe in detail the complete freight, shipping, and delivery program.	Free ground shipping is for the cheapest ground option. For all other options, we offer Members a freight difference option. An example of this is our Discounted Overnight Shipping program. Members can elect a faster delivery method and receive a discount from our standard overnight price equivalent to the standard ground shipping benefit they would have received for the same items. For example, if standard ground freight would have cost \$10 and the 2-day air option costs \$25, then the Member is asked to pay \$15 for 2-day air – the difference. In this methodology, the Member retains the benefit of the 'free ground' consideration.

60	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	<p>For Sourcewell members placing orders in Alaska and Hawaii, freight options are Ground, Express, and Priority, though these options can vary depending on shipping address. Once an order is entered all available options to that shipping address will be shown. Specific carrier options are UPS, USPS, CEVA, and UPS Freight. Transit Time are Ground 3-5, Express 2-3 Day, Priority 1-2 Day, though these can also vary depending on when the shipments leave on the truck.</p> <p>For Sourcewell members placing orders in Canada, standard terms for Shipping are: F.O.B. Destination, Freight prepaid, and added. All products are shipped from one of CDW Canada's partners' distribution centers in Toronto, Mississauga, Calgary and Vancouver. CDW Canada partners with numerous distributors including Ingram Micro and Tech Data within Canada to complement our purchasing model. That's why over 95% of all credit approved, in-stock orders are shipped the same day and are received the next business day. In most instances, Sourcewell members can expect purchases to be delivered the next day or within an average of 3 days by standard ground transportation. CDW Canada through distribution partners uses UPS, Purolator, FedEx, and many other freight carriers for larger shipments.</p>
61	Describe any unique distribution and/or delivery methods or options offered in your proposal.	<p>While most of our industry is down-sizing and drop-shipping, CDW-G maintains a unique blend of operating our own distribution centers with drop-ship capabilities, where sensible. We have distribution centers in Nevada and Illinois that are a combined 1,000,000 square feet. Though the Illinois center primarily serves the eastern United States and the North Las Vegas center the western U.S., our two distribution center model allows us to ship based on availability and at a historical accuracy of 99.7%. More than 460 distribution coworkers work a 24x5 work schedule and we have the ability to scale up during busy seasons. Our capacity to ship is at 54,000 boxes-daily, though our single day record is 37,000 boxes, leaving us plenty of capacity for this growing contract. Our customers appreciate the trickle-down value these distribution centers provide, which also allow us to offer better service on imaging, staging services for large roll-outs, and White Glove Services on the millions of Chromebooks we sell each year. We provided customers, many of them Sourcewell members, over several million Chromebooks in 2018 and performed White Glove Services on upward of 30%. Where customer projects don't require configuration or custom services, our drop-ship capabilities allow us to keep costs down.</p> <p>As further evidence of the unique level of service we can deliver, CDW-G was selected to be the sole mobile device provider for the 2020 U.S. Census, scheduled to deploy nearly 500,000 devices over the life of the contract to United States Census Bureau Headquarters, Census Offices (250+), and selected 2020 Decennial Census employee homes. This year, CDW-G has successfully deployed over 65,000 devices for the project. Due to our capabilities mentioned above, we are currently delivering on orders with the same exceptional service with no disruption to our normal business.</p>

Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
62	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	*Generally and in aggregate, the pricing to Sourcewell members is lower than that offered to other cooperatives or state purchasing departments.

Audit and Administrative Fee

Line Item	Question	Response *
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63	<p>Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell Members obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell.</p>	<p>With respect to CDW•G's compliance strategy, we are unique in how we approach managing and maintaining our contracts. Our process begins very early in the sales lifecycle by training our sales force on the Sourcewell agreement to make sure they are selling the right products at the right discounts for Sourcewell members. We can only imagine what a mess it would be for all parties should an uninformed seller transact, say, a 3rd party managed services deal on this Sourcewell agreement.</p> <p>After a sale has gone through, rather than putting the burden of reporting and compliance checks on the sales teams like other companies, CDW•G dedicates a highly specialized Program Management team led by Mark Ellis and David White for our K-12 Education and State and Local Government contracts. Mark, David, and their team are experts in general contract management, and specialized in the Sourcewell agreement. Mark is very familiar with Sourcewell's unique place in the cooperative contract space, drawing on lessons learned and historical data dating back to CDW's first contract with Sourcewell in 2004. Mark and his team are tightly integrated into the contract requirements and how compliance matters to the Sourcewell Membership.</p> <p>The next element of CDW•G's compliance process is a defined self-audit process. The Program Management team is solely responsible for ensuring that only Sourcewell members are able to access the Sourcewell agreement, utilizing the Sourcewell membership list online at https://www.sourcewell-mn.gov/member-lookup or via regular updates provided to CDW•G from Sourcewell's contract administrator Lindsey Meech.</p> <p>Additionally, our transparent partnership with the Sourcewell membership team allows our Sourcewell program to be nimble and use real-time information to ensure members have access to the agreement to drive both sales and compliance. The CDW•G Program Management team uses a custom contract management tool called Contract Editor. Only the Program Management team has access to the tool, which streamlines the process and positions us to strictly adhere to the agreement. The Contract Editor tool is a major differentiator for CDW•G. It is a custom-built application that integrates with our internal tools to manage the following items:</p> <ul style="list-style-type: none"> - Customer access to contract - Contract pricing - Contract shipping commitments - Contract fee compliance <p>The tool matches Sourcewell's unique contract code from a data pool of all CDW•G sales. We access this information to ensure our reports are submitted quarterly and on time, just as we've done for nearly 20 quarters on the current contract. For example, during one recent quarter, CDW•G reported \$187M total sales to a total of 6,123 individual Sourcewell members representing all of the public sector segments, as well as non-profit agencies in all 50 states. These sales included products and services sourced from 663 individual manufacturing partners. Any vendor hoping to be successful in executing this contract should clearly demonstrate the ability to manage a report of this size and scope with all of the necessary detail, cross referenced to Sourcewell's membership database and in compliance with all of the contract's pricing rules.</p> <p>Before we submit our contract sales report to Sourcewell, the CDW•G Program Management team quality checks the report. Because we are committed to accuracy, our team goes through the entire report line-by-line to ensure membership access to the agreement, which confirms only Sourcewell members are accessing the agreement, providing any data we need to follow up on something that doesn't look right. During the recent quarter, a total of 226,639 individual notebook computers were sold during that three-month period—the report consisted of 83,000 lines, each representing an individual transaction. Good thing we hire only the biggest contract nerds out there.</p> <p>This thorough review also ensures pricing is sold at or below the agreed upon contract price, the proper administrative fee is remitted to Sourcewell, and confirms all of the available value-adds we've negotiated for Sourcewell members, such as free freight on orders using the cheapest ground shipping options.</p> <p>After we've submitted the report, we meet with Sourcewell to review the pricing and reporting to discuss any price discrepancies or numbers that look amiss to ensure we are meeting all of Sourcewell's requirements.</p>
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64	<p>Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)</p>	<p>CDW+G is proposing the same general administrative fee which led to more than \$2,500,000,000 in sales over the term of the current contract: 1.00%. At CDW+G, we think simplicity and continuity is a good thing. Sourcewell and CDW+G both experienced record growth on the current contract at this administrative fee, and we expect even greater results on the next contract as our partnership grows (please see Question 9 for our expectations). For select product categories in our offer, to best meet Sourcewell member needs we propose these fees:</p> <ul style="list-style-type: none"> - Software: 0.25% - Chromebooks: 0.00% - Google Chrome Management SaaS: 0.25% - Amazon Web Services: 0.25% To best serve Sourcewell's growth 1.50% For select product categories in our offer, to best meet Sourcewell member needs we propose these fees: - Desktop Computers: 1.00% - Notebook/Mobile Devices: 1.00% - Chromebooks: 0.00% - Google Chrome Management SaaS: 0.00% - Amazon Web Services: 0.00% - Microsoft Azure: 0.00% - Apple: 1.00% <p>We are confident in our fee structure due to our track record of success, and a mutual understanding between CDW+G and Sourcewell that the highest fees don't lead to the highest growth. CDW+G has alternate cooperative contracts in our portfolio—it's worth noting any company with the resources necessary to provide on a contract of Sourcewell's size will in all likelihood hold numerous cooperatives—yet our sellers consistently choose Sourcewell because of its unique advantages: member focus, flexibility, and fair administration fees.</p>
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Industry Specific Questions

Line Item	Question	Response
65	<p>If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.</p>	<p>Sourcewell needs a partner with the insight to identify internal metrics that matter, and then the discipline to track them. A representative sample of internal metrics we've found to be good indicators for a successful partnership are the following:</p> <ul style="list-style-type: none"> - Customer Utilization ("spend" - breaking down by segment: State & Local Government, K-12 Education, Higher Education, Federal Government) - Technology Category penetration - New members brought into contract - # of opportunities - Customer Satisfaction survey responses - Repeat customers - Customer % that grows <p>As Sourcewell knows from the quarterly reports CDW+G's Program Management team sends, we can track many, many more internal metrics than this. And to make certain the internal metrics we track match up with Sourcewell's vision for success, we intend to meet upon award to set mutually agreed upon metrics/key performance indicators for the next five years.</p>
66	<p>Describe your capability to report Sourcewell member eco-labels</p>	<p>For Sourcewell members concerned with the environmental impact of their procurements, we track industry-recognized data to help them understand their footprint. Sourcewell members can receive from CDW+G both EPEAT reporting, which is the leading global ecolabel for the IT sector, and Energy Star, a government-backed energy efficiency measure. For these reports we provide quarterly, calendar year, or fiscal year reporting, depending on members' needs. Sourcewell members with custom time-frame reporting requests typically are honored as well. As a value-add to presenting the raw data, upon request CDW+G's Program Management team will save time for members with a summary tab that provides a snapshot of their spend by EPEAT/Energy Star versus all spend, for products we have collected this information on. If Sourcewell members have further specific requests, such as category breakouts in an easy-to-read summary, CDW+G can work with them to provide that as well. Finally, CDW+G's account managers help Sourcewell members understand and meet green initiatives. Our sales force will guide Sourcewell members toward solutions with environmentally preferred attributes at the pre-sale stage, and also make this a part of quarterly business reviews so that members are aware of our green offerings.</p>

67	Describe your capability to identify third-party issued eco-labels, ratings or certifications for the equipment or products within your catalog related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	With new environmental legislation being proposed at all levels of government, Sourcewell members require a partner that can help them understand their purchases and remain compliant. Eco-labels, ratings, and certifications for solutions in our catalog can be found on CDW+G's website at www.cdwg.com . CDW+G can also help Sourcewell members in determining environmentally preferable solutions through a number of ways, including training our sales force on the changing requirements of environmental legislation at all government levels, and offering solutions that meet the evolving standards associated with the Environmentally Preferable Purchasing Program (EPP) and the IEEE Standard for the Environmental Assessment of Personal Computer Products.
68	Describe your strategy related to the implementation and management of multiple cooperative purchasing contract awards, if applicable.	Any reseller that believes it has the size, resources, and capabilities to meet the high standards established in recent years on the Sourcewell contract will in all likelihood hold multiple cooperative agreements. CDW+G has partnered with multiple coops for 20 years, and we are proud to say all of our historic partners have grown. Similar to our successful approach in offering competing brands of technology, we have a well-formed group of core coop partnerships that offer different benefits to their membership-base. CDW+G does its sincere best to provide clear information to customers and help them in choosing both the right technology as well as the right contract for their needs. By working with CDW+G's Program Management team who are experts on each contract, our account managers are kept up-to-date on contract benefits and requirements, along with any changes to programs, which they pass along to their customers for a complete procurement picture. Each cooperative has a unique Program Manager to avoid any conflict of interest as the team works on marketing plans together. CDW+G's organizational structure supports this contract specialization, ensuring each contract partner receives the individualized attention it deserves and that allows it to grow and be successful. Sourcewell will have two trusted members of CDW+G's Program Management team who handle all reporting, who are experts on Sourcewell's unique benefits and requirements, and are responsive to Sourcewell's needs. Our strategy is not to pit cooperatives—or technology brands for that matter—against each other, but to have individualized growth plans and objectives. After the evaluation committee has read through our proposal, we hope ours for Sourcewell is clear and inviting. Please remember, as Sourcewell's primary IT contract partner on the current Technology Solutions contract, CDW+G has furthered our history of alignment, trust, and accelerated contract adoption. Due to a disciplined organizational strategy, we have collectively grown the Sourcewell contract revenue by 44% over the last 5 years and increased the number of members accessing Sourcewell's CDW+G contract by 23%. Keeping a similar alignment in the future, we expect growth to continue from our ongoing dedication to serving Sourcewell's membership at the highest level.
69	Identify any reseller certification(s) (or similar third-party validation of technical expertise) that your organization has attained, if any.	<p>Out of respect for the Sourcewell evaluation committee's time, to allow space in your schedules Reseller CDW+G has been an Acer America Authorized Reseller for over 17 years, and is currently an Apple – Premium Corporate Reseller CDW and Apple have a very successful, established relationship.</p> <ul style="list-style-type: none"> - Apple's Largest Corporate Channel Partner in the US - Apple's only reseller with the designation Premium Corporate Reseller We are an Authorized Reseller including mobile device management, carrier activations, and application development. <p>Cisco Gold Certified Partner There is no other Cisco Gold Partner in the world that offers CDW's expertise across multiple technologies.</p> <ul style="list-style-type: none"> - In 2018, CDW achieved the newest of Cisco's Master Specializations, in networking, making CDW the first Cisco channel partner in the Americas to hold all five Master Specializations that Cisco offers. The other Cisco Master Specializations are security, collaboration, data center and hybrid cloud, and cloud and managed services. Master Specializations are Cisco's highest and most exclusive level of partner certification. - At the 2018 Cisco Partner Summit, CDW was recognized as Architectural Excellence Partner of the Year: Security. In addition to this global award, CDW received 13 geography and theater/area awards. <p>Dell EMC Titanium Black Partner In 2017, Dell EMC named CDW a Titanium Black Partner, a nod to CDW's exemplary commitment to Dell EMC.</p> <ul style="list-style-type: none"> - CDW is Dell's #1 Partner Worldwide. - CDW is the only channel partner that stocks Dell EMC hardware. - CDW has dedicated Dell EMC account managers. HPE Platinum Business Partner <p>CDW has had a partnership with HP/HPE for the past 30 years. CDW is an HPE Platinum Partner and was honored with Hewlett Packard Enterprise's 2016 North America Network Service Provider (NSP) Partner of the Year Award at HPE's Global Partner Conference. HP Inc. Platinum Business Partner CDW is an HP Inc. (HPI) Platinum Business Partner and HPI's #1 partner worldwide. We are authorized to sell HP's full suite of products and field a large onsite team that provides expert</p>

guidance and support. Lenovo

- Largest Global Partner

CDW is Lenovo's largest Global Direct Response Channel Partner, Microsoft Gold Certified Partner CDW is a Microsoft Gold Certified Partner, #1 ranked Licensing Solution Provider (LSP) and ESA (Enterprise Software Advisor). CDW is also a Microsoft Software Asset Management (SAM) Partner and an Authorized Direct Reseller (ADR) for Open Value licensing programs in all 50 states and Canada. We are the worldwide leader in Microsoft Enterprise Agreements as well as Server and Cloud Enrollments. CDW ranks as Microsoft's #1 LSP in the following areas:

- CSP – Cloud Solution Provider

- Surface ADR – Authorized Device Reseller CDW is one of only a handful of Cloud Solution Providers to work with Microsoft. As a testament to our expertise and differentiation, CDW ranks as Microsoft's #1 LSP in the following areas:

- Reseller of Microsoft Cloud Solutions

- Office 365 customers deployed

- U.S. Partner in Azure

- Open Value Agreement CDW is an authorized Microsoft National Systems Integrator Partner offering award-winning services around all of Microsoft's key solution areas. CDW is one of only a handful of Cloud Solution Providers to work with Microsoft.

At the individual level, CDW-G coworkers hold nearly 6,700 technical certifications, with the highest number for leading OEMs such as Cisco, Microsoft, and Dell EMC, Cisco. CDW has over 1,700 Cisco-certified presales engineers, technical specialists, solution architects, and professional services engineers who are available to provide expert guidance and support. We hold over 90 Cisco Expert certifications.

CDW has the highly qualified resources to stay current with Cisco technologies and continue to meet the standards for all of our specializations. CDW has almost 1,900 Cisco certified presales engineers, technical specialists, solution architects, and professional services engineers who are available to provide expert guidance and support. Certifications include:

- ~100 CCIE/CCDE (includes 1 Quintuple, 6 Triple, 16 Double)

- ~350 Cisco Certified Professionals (CCNP/CCDP/CCSP/CCVP/CCIP)

- ~650 Cisco Certified Associates (CCNA/CCDA)

- ~700 Cisco Certified Sales Experts Microsoft. As a testament to our expertise and

differentiation, we have approximately 300 Microsoft-focused engineers, technical specialists, presales consultants, and project managers dedicated exclusively to our customers' Microsoft engagements. Our team has completed more than 6,000 Microsoft services engagements and 750 joint Microsoft-CDW engagements to date.

Dell EMC. We have the following certified Dell-EMC engineers at CDW-G

- ~40 EMC certified technology architects

- ~10 Dell EMC Enterprise technical pre-sales specialists

- ~10 Dell EMC client solution specialists

- ~10 EMC certified cloud architects

- 1 EMC certified data scientist

- ~10 EMC certified implementation engineers

One of the reasons we've been so successful in receiving technical certifications and validation from our partners is through organizational investment. CDW employs a dedicated vendor accreditations coordinator (VAC) who takes responsibility for monitoring coworkers' technical and vendor sales certifications in line with our manufacturer partner accreditations. The VAC is part of our Vendor Alliances department, which comprises Vendor Managers for all major hardware manufacturers including HPE/II, Dell, IBM, Lenovo, HDS, Cisco, NetApp, and EMC. We have the highest-level reseller partnerships (Platinum or Gold) with these vendors, which are usually contingent on CDW maintaining minimum numbers of accredited resources at all levels from sales, pre-sales, field and systems engineer to architect. However, we tend to exceed these. Four CCIEs are required for a company to maintain its Cisco Gold Certified Partner status. CDW has more than 10x the required number with 63 CCIEs in our company.

Each of the partner vendors has designated an Account Manager and Systems Engineer to CDW, who communicates product developments to our Vendor Managers, as well as the associated technical training courses available. Some vendors also have Partner Education Managers specializing in training and certification guidance for CDW. The Vendor Managers then work with the VAC to identify the staff impacted by the development and make bookings for training and exams.

Finally, CDW-G has coworkers that hold various levels of project management related certifications including the following.

- Certification: American Society for Quality - Certified Six Sigma Green Belt

- Certification: CCIE

- Certification: CCNP/CCDP

- Certification: Certified ScrumMaster (CSM)

- Certification: Cisco Telepresence PM Certification

- Certification: CISSP

- Certification: CSM

- Certification: CSM (Certified Scrum Master)

- Certification: ITIL Foundation

- Certification: ITIL Foundation

- Certification: ITIL Foundation

		<ul style="list-style-type: none"> - Certification: ITIL Foundation, MBA - Certification: ITIL Practitioner - Certification: ITIL Service Operation - Certification: Lean Six Sigma Black Belt - Certification: Master Certificate in Project Management - Certification: Master of Science in Project Management - Certification: MBA - Certification: MCSE - Certification: PMI CAPM - Certification: PMI PgMP - Certification: PMI PMP - Certification: PMI-RMP - Certification: Project + - Certification: Six Sigma Yellow Belt - Certification: Six Sigma Black Belt - Certification: Six Sigma DMAIC Green Belt
70	<p>Summarize your current approach to serving Sourcewell (not-for-profit) and plans to grow utilization of your solution.</p>	<p>Currently, we serve Members in each vertical with a specialized sales team dedicated to similarly situated accounts (government, education, or not-for-profit) to promote familiarity with the common technology trends for each vertical as well as gain expertise in handling various regulations or contracting norms for that part of the Member base. In addition to the specialized sales team, we segment our marketing along these verticals—creating special landing pages on cdwg.com and publishing magazines for each vertical, such as www.EdTechMagazine.com to give focus to the discreet issues facing Members which might be solved by technology. This platform has been a valuable resource for feedback to CDW•G from the community we serve; though we obviously need to feature some advertisement to fund the investment, we try to keep that activity to a minimum to showcase the message of solutions in the forefront.</p> <p>We intend to continue our sales team segmentation approach to serving Members because it we us closer to the customer, increases understanding of their unique challenges and amplifies our. Additionally, CDW•G is experiencing a transformation from a VAR into a solutions provider including robust services to compliment the products we have traditionally sold and enable better outcomes through a completely implemented and supported solution. Our logistics capabilities remain top-notch and we do not intend to cede any ground to the competition on our unmatched reputation for smooth transactions and reliable delivery. We are building atop that foundation with the same intense focus on bringing exceptional value, reliability and customer-focus to the service portfolio as it expands. Engineering talent will continue to mostly be arranged by technology—a wireless network requires deep understanding of the nuances of the connectivity and access point specifications for number of users, area served, materials used in the building—less knowledge about the customer segment. Our design specialists are trained to surface segment specific considerations, while the engineers maintain their expertise in the technology itself.</p> <p>Specific to the growth of Sourcewell, CDW•G will continue to work closely with Sourcewell to present the Sourcewell contract to new Members as an alternative to going through a time and resource-consuming RFP process. As demonstrated in the past, CDW•G can customize the Sourcewell agreement to meet the unique needs of each customer vertical. For example, we onboarded AWS with customer specific terms and conditions for K-12 Education. And we will work with Sourcewell to identify low-spend CDW•G customers that have successfully adopted other Sourcewell contracts. We've begun efforts like this before, and feel we have a good blueprint for CDW•G to build a plan with Sourcewell and leverage other Sourcewell contract partners, such as Grainger, to increase the number of members accessing the technology contract. CDW•G will reciprocate efforts with any non-competing Sourcewell contract partner to maximize Sourcewell's overall contract adoption, regardless of commodity.</p>

Exceptions to Terms, Conditions, or Specifications Form

Only those Proposer Exceptions to Terms, Conditions, or Specifications that have been accepted by Sourcewell have been incorporated into the contract text.

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.
2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.
3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.
4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."

- [Financial Strength and Stability](#) - Financial Strength and Stability.zip - Tuesday August 13, 2019 07:37:56
- [Marketing Plan/Samples](#) - Marketing Plan Samples.zip - Tuesday August 13, 2019 07:38:08
- [WMBE/MBE/SBE or Related Certificates](#) - WMBEMBSBE or Related Certificates_CDW QNA Letter.pdf - Tuesday August 13, 2019 07:38:18
- [Warranty Information](#) - Warranty Information.zip - Tuesday August 13, 2019 07:38:32
- [Pricing](#) - Pricing.zip - Tuesday August 13, 2019 10:00:57
- [Supplemental Pricing Documentation \(if needed\)](#) - Supplemental Pricing Documentation.zip - Tuesday August 13, 2019 10:10:00
- [Additional Document](#) - Additional Documentation.zip - Tuesday August 13, 2019 11:47:45

Proposers Assurance of Comp

PROPOSER ASSURANCE OF COMPLIANCE

PROPOSER'S AFFIDAVIT

The undersigned, authorized representative of the entity submitting the foregoing proposal (the "Proposer"), swears that the following statements are true to the best of his or her knowledge.

1. The Proposer is submitting its proposal under its true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, the Proposer possesses, or will possess before delivering any products and related services, all applicable licenses necessary for such delivery to Sourcewell member agencies. The undersigned affirms that he or she is authorized to act on behalf of, and to legally bind the Proposer to the terms in this Contract.
2. The Proposer, or any person representing the Proposer, has not directly or indirectly entered into any agreement or arrangement with any other vendor or supplier, any official or employee of Sourcewell, or any person, firm, or corporation under contract with Sourcewell, in an effort to influence the pricing, terms, or conditions relating to this RFP in any way that adversely affects the free and open competition for a Contract award under this RFP.
3. The contents of the Proposer's proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the Proposer and will not be communicated to any such persons prior to the official opening of the proposals.
4. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request, and other documents in this solicitation and affirms that any and all exceptions have been noted and included with the Proposer's Proposal.
5. The Proposer will, if awarded a Contract, provide to Sourcewell Members the /products and services in accordance with the terms, conditions, and scope of this RFP, with the Proposer-offered specifications, and with the other documents in this solicitation.
6. The Proposer agrees to deliver products and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.
7. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
8. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statute §13.591, Subd. 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals generally become public data. Minnesota Statute §13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.

The Proposer understands that it is the Proposer's duty to protect information that it considers nonpublic, and it agrees to defend and indemnify Sourcewell for reasonable measures that Sourcewell takes to uphold such a data designation.

By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.
- Robert Kirby, President, CDW Government LLC

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

Yes No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

**Exhibit C
Pricing**

www.cdwg.com/sourcewell

Category		Brands	CDW-G Contract 081419 CDW Discounts effective 12/1/2019
A	Accessories (A)	All Brands Excluding Apple	7.50%
B	Power, Cooling & Racks (B)	All Brands Excluding Apple	3.50%
C	Desktop Computers (C)	All Brands Excluding Apple	3.75%
D	Data Storage/Drives (D)	All Brands Excluding Apple	4.50%
E	Enterprise Storage (E)	All Brands Excluding Apple	7.75%
F	Point of Sale/Data Capture (F)	All Brands Excluding Apple	5.00%
H	Servers & Server Management (H)	All Brands Excluding Apple	5.25%
L	Notebook/Mobile Devices (L)	All Brands Excluding Apple	4.25%
N	NetComm Products (N)	All Brands Excluding Apple	9.00%
O	Carts and Furniture (O)	All Brands Excluding Apple	5.25%
P	Printing & Document Scanning (P)	All Brands Excluding Apple	3.25%
Q	Services (Partner Delivered) (Q)	All Brands Excluding Apple	7.25%
S	Software (S)	All Brands Excluding Apple	5.25%
T	Collaboration Hardware (T)	All Brands Excluding Apple	10.00%
V	Video & Audio (V)	All Brands Excluding Apple	7.00%
W	Cables (W)	All Brands Excluding Apple	13.00%
Q/WA	Warranties-Product Protection (WA)	All Brands Excluding Apple	7.50%
T/PB	Video Hardware (PB)	All Brands Excluding Apple	3.00%
V/IW	Interactive Whiteboards (IW)	All Brands Excluding Apple	0.00%
V/VT	Interactive Flat Panel Display (VT)	All Brands Excluding Apple	9.00%
L/NB/CBK	Chromebooks (CBK)	All Brands Excluding Apple	3.00%
S/NU/GCH	Google Chrome Management SaaS (GCH)	All Brands Excluding Apple	0.00%
All	All Categories	Apple	0.50%
	Amazon Web Services (AWS)	Amazon	0.00%
All Other	All Other Categories	All Brands	0.00%

2020-2021 CDW-G Professional Services Hourly Rates

Sourcewell Contract 081419-CDW

This Rate Sheet is intended to provide a baseline for pricing CDW Professional Services.

Role/Description	Hourly Rate (Maximum)
Associate Consulting Engineer	\$175
Consulting Engineer	\$215
Senior Consulting Engineer	\$225
Technical Lead/Principal Consulting Engineer	\$255
Enterprise Consulting Architect	\$255
Business Consulting Analyst	\$245
Project Administrator	\$165
Project Manager	\$210
Senior Project Manager	\$215
Enterprise Project Manager, PMO Lead	\$230
Program Manager	\$230
Technical Architect	\$350



Direct Dial: 239-590-4556

Fax: 239-590-4539

BENJAMIN R. SIEGEL, CPA, C.M.
EXECUTIVE DIRECTOR

RICHARD Wm. WESCH
PORT AUTHORITY ATTORNEY

**BOARD OF
PORT COMMISSIONERS**

BRIAN HAMMAN

FRANK MANN

CECIL L. PENDERGRASS

KEVIN RUANE

RAY SANDELLI

October 1, 2021

Anup Sreedharan, Senior Manager, Program Management
CDW Government, LLC
230 N. Milwaukee Ave.
Vernon Hills, IL 60061

RE: Sourcewell Contract 081419-CDW Piggyback 21-98NJD - Technology Catalog Solutions


Dear Mr. Sreedharan:

Please find the agreement for the referenced Sourcewell Contract Piggyback attached for your signature. It is important that you follow the instructions below and furnish the following documents within seven (7) calendar days from the date of this correspondence:

1. Two originals of the agreement are required. Sign the attached agreement in blue ink in duplicate. Have your signature sealed and witnessed on both originals. Please leave the date blank on both originals. The date will be filled in at the time the agreement is executed by the Port Authority. An officer of the corporation must sign both agreements. Agreements signed by a representative other than an officer must be provided along with proof of the signatory's authority to bind the corporation.
2. Certificate of Insurance. Provide the certificate of insurance which fully complies with the insurance requirements set forth in the attached agreement.
3. Return the signed, sealed and witnessed agreements and the certificate of insurance to:

Nick Diaz, Senior Procurement Agent
LEE COUNTY PORT AUTHORITY PURCHASING OFFICE
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913-8213

A fully executed copy of the agreement will be furnished to you for your records upon approval. The Lee County Port Authority looks forward to doing business with you.

Sincerely, 
Melissa M. Wendel, CPPO, NIGP-CPP

cc: Mark Trank, Port Authority Attorney
Phillip Murray, Director, Information Technology
Dana Cline, Senior Manager, Information Technology
Raymond Wilf, Senior Manager, Information Technology
Nick Diaz, Senior Procurement Agent

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board (1) approve use of Contract 2018011-01 to purchase Information Technology Solutions and Services from CDW-G Government, LLC. through Omnia Partners cooperative agreement and (2) Request Board authorize the Executive Director to exercise the optional two one (1) year renewals at the same terms and conditions as the initial contract.
2. **FUNDING SOURCE:** General Airport operating revenues collected during the normal operations of the Airport, account string VF5132541200.505280 Information Technology
3. **TERM:** From execution of agreement until 2/28/2023 with two one (1) year options until 2/28/2025.
4. **WHAT ACTION ACCOMPLISHES:** Provides the Authority the ability to secure minor technology hardware, software, supplies and accessories on an as-needed basis to ensure technology needs at the Southwest Florida International Airport and Page Field are met. The agreement is for an initial term until 2/28/2023 for a not to exceed amount of \$500,000 with an option to extend up to two (2) additional years for a not to exceed amount of \$500,000.

5. **CATEGORY:** 23.
Administrative Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Brian McGonagle

DIV. Administration

10. **BACKGROUND:**

The Information Technology Department provides and maintains computers and associated peripherals and accessories for the Lee County Port Authority in order to ensure reliable technology for use by the administrative offices, as well as for the common use passenger processing and flight information display systems.

The Authority routinely purchases computer equipment, peripherals, accessories and repair parts to ensure proper functioning and maintenance of the Authority's technology equipment and systems. The inventory of computers and equipment continues to grow, as does the cost to acquire technology equipment. Therefore, an agreement to purchase on an as-needed basis and at a cost-effective price point is necessary to ensure an effective means to meet operational demand.

The Authority recommends leveraging the agreement available through Omnia Partners. Omnia Partners is the nation's

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<i>Benjamin R. Siegel</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)

largest cooperative purchasing organization whose mission is to establish partnerships with hundreds of industries to leverage robust purchasing power to obtain excellent pricing. Omnia Partners, in conjunction with the City of Mesa, issued a competitive solicitation which resulted in an award of a multi-year agreement with CDW-G.

There are several advantages to utilizing the Omnia Partners agreement including:

- access to the entire CDW-G catalog
- competitive pricing based on discounts off of the published catalog
- ability to make informed buy decisions by applying analytical data to required technology category
- may alleviate some of the challenges associated with supply chain shortages
- the Authority saves administrative costs from not having to conduct its own solicitation
- the Authority saves time and transactional costs by directing all spend activity to a contract
- the Authority increases spend visibility through accessing management reports

Staff has performed a detailed analysis based upon historical past purchases, which indicates it is in the best interest of the Authority to utilize this agreement for certain categories of purchase, such as cabling, power, cooling and racks, as well as data storage and drivers. Additionally, the Authority saves administrative costs from not having to conduct its own solicitation.

The agreement will be effective upon execution by the Board and will continue until 2/28/2023 with an option to renew for up to two (2) additional years at the discretion of the Authority and the Executive Director.

Attachments:

Signed CP 21-99NJD CDW-G (Omnia) - Execution of Contract Letter

Piggyback Agreement - CDW-G (Omnia)

Signed Written Notice of Determination - CDW-G (Omnia) rev

LEE COUNTY PORT AUTHORITY

UTILIZATION OF OTHER COMPETITIVELY PROCURED CONTRACTS

<p>Date: <u>09/28/2021</u></p> <p>Vendor: <u>CDW Government LLC</u> <u>Information Technology</u></p> <p>Description: <u>Solutions and Services</u></p> <p>Term: <u>Effective date – 02/28/2023</u></p> <p>Renewal Term: <u>Two (2), one-year (1) options</u></p> <p>Procurement Agent: <u>Nick Diaz</u></p> <p>Contract #: <u>Omnia-CDW 2018011-01</u></p>	<p>Board Approval Req: <input checked="" type="checkbox"/> Yes / No <input type="checkbox"/></p> <p>Lead Agency: <u>Omnia Partners / Mesa, AZ</u></p> <p>Posting Req'd: <input type="checkbox"/> Yes / No <input checked="" type="checkbox"/></p> <p><input type="checkbox"/> Single Purchase – Total Cost : _____</p> <p><input checked="" type="checkbox"/> Estimated Purchase Per BoPC Approval -Est'd Annual cost: <u>11.4.2021</u></p> <p>Cost (this purchase): _____</p> <p>Balance: _____</p>
---	--

NOTICE OF WRITTEN DETERMINATION

A contract may be awarded for a commodity or service when the Procurement Manager determines utilizing the contract is authorized and in the Authority's best interest based on the following findings:

Product/Service being requested:

[Workstations, Laptops, Network Equipment, Peripherals, Hardware, and Software](#)

The contract has been evaluated and found to be appropriate because:

- Cooperative or Piggyback.
 - Competitive requirements have been met.
 - Conforms to all applicable laws and best practices.
 - Specs, price, terms and conditions produce best value.
 - The lead agency has been contacted and has verified eligibility.
 - There are no known vendor performance or contract compliance issues.
 - The vendor is appropriately insured and licensed to do business in the State of Florida.
 - The term of the agreement to be piggybacked: 03/01/2018 – 02/28/2023.
- Renew Terms Two (2) additional, one-year (1) renewal options
- Other. LCPA Purchasing Manual Section 5.3 (B)

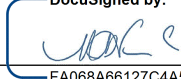
The advantages of utilizing this method of procurement include:

Cost Savings. [The Authority will be able to take advantage of competitive pricing solicited by the City of Mesa in conjunction with Omnia. Omnia is the nation's largest cooperative purchasing organization whose mission is to establish partnerships with hundreds of industries to leverage robust purchasing power to obtain excellent pricing. The entire CDW-G catalog is available through this agreement. Pricing is based on minimum discounts off of the published catalog price.](#)

Improved terms. Explain: _____

Other. Explain: _____

LEE COUNTY PORT AUTHORITY
UTILIZATION OF OTHER COMPETITIVELY PROCURED CONTRACTS

DocuSigned by:  Date: 9/30/2021
Approved by: _____
FA068A66127C4A5...
Melissa M. Wendel, Procurement Manager, CPPO, NIGP-CPP

Estimated Spend Reconciliation (only required to be completed for Estimated Award Approvals)

<u>Date</u>	<u>Spend Balance</u>	<u>Purchase Amount</u>	<u>Remaining Balance</u>	<u>REQ Number</u>	<u>PO Number</u>	<u>Description of Purchase</u>	<u>Branch Plant</u>

Contract Number 9210
Vendor Number 104098

LEE COUNTY PORT AUTHORITY
INFORMATION TECHNOLOGY SOLUTIONS AND SERVICES
AGREEMENT

This Agreement ("Agreement") is entered this ____ day of _____, 2021, 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 CDW GOVERNMENT LLC, an Illinois corporation, authorized to do business in the State of Florida, ("Provider"), at 230 N. Milwaukee Ave., Vernon Hills, Illinois, 60061, Federal Identification Number 36-4230110.

WITNESSETH

WHEREAS, Authority desires to obtain goods and services from Provider for the procurement of information technology solutions and services (workstations, laptops, network equipment, peripherals, hardware, software) to meet the needs of the Authority in Fort Myers, Florida; and,

WHEREAS, Provider has entered into an agreement between Provider and Omnia Partners ("Source Contractor") pursuant to competitive solicitation RFP 2018011 issued by City of Mesa, Arizona in conjunction with Omnia partners, ("Source Agreement") to provide similar goods and services to those required by the Authority; and,

WHEREAS, both Provider and Source Contractor have agreed that the terms and pricing of the Source Agreement may be utilized by other local governments to obtain similar goods and services; and,

WHEREAS, 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, Provider has reviewed the goods and services required under this Agreement and has agreed to provide the requested goods and services, and states that it is qualified, willing and able to provide all such goods and services according to the provisions, conditions and terms below and in accord with all governing federal, state and local laws and regulations.

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 WORK

Provider hereby agrees to provide the goods and services set out in Exhibit A, attached hereto and made a part of this Agreement.

3.0 SOURCE AGREEMENT - INCORPORATION BY REFERENCE

It is the intent of the parties to allow Authority to "piggyback" the Source Agreement, attached as Exhibit B, as permitted by that Agreement and the Authority Purchasing Manual. The terms of the Source Agreement are hereby merged into and incorporated by reference as part of this Agreement. If there are any conflicts between the terms of the Source Agreement and this Agreement and Exhibit(s), the terms of this Agreement will control.

4.0 TERM OF AGREEMENT

The term of this Agreement begins on the first date written above ("Effective Date") and will continue for the duration of the Source Agreement, including renewals or extensions thereof.

5.0 COMPENSATION

Authority will pay for all requested and authorized goods provided or services completed in accordance with the requirements, provisions, and/or terms of this Agreement based on the price list set forth in Exhibit C, attached hereto and made a part of this Agreement.

6.0 EXCEPTIONS

Exceptions to the Source Agreement, if any, are specifically amended as set forth in Exhibit D, attached hereto and made a part of this Agreement.

7.0 NOTICES AND ADDRESS

All notices required and/or made pursuant to this Agreement will be in writing and will be given by the United States Postal Service, to the following addresses of record:

If to the Authority:

LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Attention: Airport Executive Director

If to the Provider:

CDW GOVERNMENT LLC
230 N. Milwaukee Avenue
Vernon Hills, IL 60061
Attention: Senior Manager, Program Management

8.0 ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties in the space provided.

[Remainder of Page Intentionally Left Blank]

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

ATTEST: LINDA DOGGETT
Clerk of the Circuit Court

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair or Vice Chair

Approved as to Form for the Reliance
of Lee County Port Authority Only:

By: _____
Port Authority Attorney's Office

Signed, Sealed and Delivered

CDW GOVERNMENT LLC

Carmen Castro

Witness



Authorized Signature for Provider

Carmen Castro

Witness

By: Dario Bertocchi
Printed Name

SEAL

Director, Program Sales
Title

Exhibit A Scope of Work

1. **MINIMUM REQUIREMENTS.** Contractor must meet the following minimum qualifications:
 - a. A full range of information technology solution products and services to meet varying requirements of governmental agencies.
 - b. Have a strong national presence as a computer solutions provider.
 - c. Have a distribution model capable of delivering products, free of charge, in a timely manner on a nationwide basis.
 - d. Have a demonstrated sales presence.
 - e. Ability to provide a toll-free telephone and state of the art electronic facsimile and internet ordering and billing capabilities.
 - f. Be able to meet the minimum requirements of the cooperative purchasing program detailed herein.

2. **ORDERING.** Although the City is open to alternate ordering methods, the primary methods for customers placing orders with the Contractor is through the following:
 - a. Online
 - b. Telephone
 - c. Fax
 - d. Email

3. **SCOPE OF PRODUCTS.** Contractor will provide the ability to purchase a comprehensive, wide variety of Information Technology Solution Products including, but not limited to, the following categories:
 - a. **Personal Computer Systems:** National brand name desktop PCs, notebooks and laptops from Enterprise Tier and Middle Tier Contractors that are business related computers, manufactured by companies, such as, Apple, COMPAQ, Dell, Gateway, Hewlett Packard, IBM / Lenovo and Toshiba.
 - b. **Standard Business Workstation:** These will be used for typical tasks, which will include word processing, spreadsheet analysis, database management, business graphics, statistical analysis, internet, and other office automation activities. Product will include the operating system license, software media and documentation in the hardware shipment.
 - c. **High End Workstation:** These will be used by application developers using GIS, CASE or other high-level language development tools, Computer Aided Design and Drafting professional, Internet Application developers or other sophisticated application work. Product will include the operating system license, software media and documentation in the hardware shipment.
 - d. **Laptop Computer or Notebook:** These will be used by traveling or remote access users for typical office automation and business productivity use. With a port replicator or docking station, it may also be used as a standard desktop. Product will include the operating system license, software media and documentation in the hardware shipment.
 - e. **Network Equipment:** This includes equipment primarily used for communications over an IP network. This includes layer 2 and layer 3 switches, routers, area wireless access points, point-to-point wireless access, optics, media interfaces (i.e. serial, T1, T3, OC3) and fiber channel. Class of equipment should include home office, small and medium business, and enterprise. Contractors may include, but not limited to, Cisco Systems, Dell, Juniper Networks, HP, Extreme Networks, Enterasys Networks, D-Link, Netgear, and Brocade Communications Systems.

- f. Monitors: These will include plug and play compatible monitors that are manufactured for the above systems and/or any other brand that may be specifically called for by the ordering entity and which meet the most current UL and OSHA requirements.
 - g. Computer and Network Products and Peripherals: Complete availability of major manufacturers Product lines on items such as, but not limited to RAM, graphic accelerator cards, network interface cards, cables, printers, scanners, keyboards, drives, memory cards, cables, batteries, etc.
 - h. Services:
 - i. Services means such as, consulting, technical support, trade-ins, repair, design, analysis, configuration, implementation, installation, training, and maintenance, etc. In addition, services which are related to the design, use or operation of the Products being purchased such as system configurations, testing, hardware/software installation, upgrades, imaging, etc. as described generally in this Agreement and as more particularly described in a Statement of Work or SOW (meaning a document in electronic or written form that is signed and delivered by each of the Parties for the performance of Services).
 - ii. Cloud Computing means third party cloud computing and storage services, where Contractor acts as a rebiller only and has no control over the delivery of the cloud computing and storage services. City acknowledges that the cloud service provider, and not Contractor, will be responsible for performance of the Cloud Services. Also, before Contractor can sell cloud computing and/or storage services from a third party to the City, City must execute an agreement governing said cloud computing and/or storage services with the third-party cloud services provider.
 - i. Comprehensive Product Offering: Contractor's catalog and Services set forth in Exhibit B shall be available. The City reserves the right to accept or reject any or all items offered.
 - j. Financing: Options available such as lease programs and conditional sales contracts.
4. LICENSES. The City may be required to sign a separate agreement, rider or End User Licensing Agreement ("EULA"), or such other terms as required by manufacturers, software publisher, or cloud service provider.
5. DEFECTIVE PRODUCT. All defective Products shall be replaced and exchanged by the Contractor. The cost of transportation, re-shipping or other like expenses shall be paid by the Contractor and in the case of certain, special orders, other reasonable charges may be paid by the Contractor as defined in the order or as otherwise agreed to by the Parties. All replacement Products must be received by the City within seven (7) days of initial notification, when such products are in Contractor stock; if replacement Product is not in Contractor's stock, Contractor will use commercially reasonable efforts to order the product within one (1) business day of the initial notification from the City and will ensure product is received within seven (7) days after Contractor's receipt of the product.

Exhibit B
Source Agreement

City of Mesa, AZ

Contract # 2018011-01

for

Information Technology Solutions and Services

with

CDW Government, LLC

Effective: March 1, 2018

The following documents comprise the executed contract between the City of Meza, AZ and CDW Government, LLC., effective March 1, 2018:

- I. Executed Contract
- II. Mayor and Council Approval
- III. Supplier Response
- IV. Original RFP



COUNCIL MINUTES

February 5, 2018

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on February 5, 2018 at 5:45 p.m.

COUNCIL PRESENT

John Giles
David Luna
Mark Freeman
Christopher Glover
Francisco Heredia
Kevin Thompson
Jeremy Whittaker

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Dee Ann Mickelsen
Jim Smith

Mayor's Welcome.

Invocation by Pastor Ben Diaz with Palabra de Vida (Word of Life).

Pledge of Allegiance was led by Councilmember Thompson.

Awards, Recognitions and Announcements.

There were no awards, recognitions or announcements.

1. Take action on all consent agenda items.

All items listed with an asterisk (*) will be considered as a group by the City Council and will be enacted with one motion. There will be no separate discussion of these items unless a Councilmember or citizen requests, in which event the item will be removed from the consent agenda and considered as a separate item. If a citizen wants an item removed from the consent agenda, a blue card must be completed and given to the City Clerk prior to the Council's vote on the consent agenda.

It was moved by Councilmember Thompson, seconded by Councilmember Glover, that the consent agenda items be approved.

Carried unanimously.

*2. Approval of minutes from previous meetings as written.

Minutes from the January 8, 11, and 22, 2018 Council meetings.

3. Take action on the following liquor license applications:

*3-a. It Ain't Chemo

This is a one-day event to be held on Saturday, February 10, 2018 from 9:00 A.M. to 9:00 P.M. at Riverview Park, 2100 West Rio Salado Parkway. **(District 1)**

*3-b. AMC Superstition East 12

A multi-screen cinema is requesting a new Series 6 Bar License for American Multi-Cinema Inc., 1935 South Signal Butte Road - Andrea Dahlman Lewkowitz, agent. There is no existing license at this location. **(District 6)**

*3-c. ATL Wings

A restaurant that serves lunch and dinner is requesting a new Series 12 Restaurant License for Stapley Wings LLC, 1455 South Stapley Drive, Suites 22-24 - Andrea Dahlman Lewkowitz, agent. The existing license held by Mark Killian, sole proprietor, will revert to the State. **(District 4)**

*3-d. Elgin Distillery

This is a one-day craft distillery festival to be held on Saturday, March 3, 2018 from 9:00 A.M. to 4:00 P.M. at Sunland Village, 4601 East Dolphin Avenue. **(District 2)**

*3-e. Village of Elgin Winery

This is a one-day wine festival event to be held on Saturday, March 3, 2018 from 9:00 A.M. to 4:00 P.M. at Sunland Village, 4601 East Dolphin Avenue. **(District 2)**

4. Take action on the following off-track betting license application:

*4-a. Turf Paradise, TP Racing LLLP

New Off-Track Betting License for Turf Paradise, TP Racing LLLP to telecast at Moose & Bear, located at 118 East McKellips Road, Suite 103, TB Concepts LLC. Applicant: Vincent Acri Francia. **(District 1)**

5. Take action on the following contracts:

*5-a. One-Year Renewal to the Term Contract for Executive Physicals for Citywide Departments as requested by the Human Resources Department. **(Citywide)**

This contract provides annual physicals for the City's executive staff as a means of maintaining optimum health. There are approximately 65-70 positions eligible to participate in this program.

The Human Resources Department and Purchasing recommend authorizing the renewal contract with Banner Occupational Health Clinics, at \$88,500, based on estimated usage.

*5-b. One-Year Renewal to the Term Contract for Deceased Animal Collection Services for the Community Services Department. **(Citywide)**

This contract provides a vendor to collect and dispose of deceased animals up to 150 pounds that are reported within the City. The contractor is responsible for the proper disposal by cremation or other means in accordance with the standards and methods approved by the Maricopa County Health Department.

The Community Services Department and Purchasing recommend authorizing the renewal contract with APM/Couts Enterprises, Inc., dba Arizona Pet Mortuary, at \$54,000, based on estimated usage.

*5-c. Purchase of One Replacement Fire Apparatus, an Air Light/Rehab Unit, for the Fire and Medical Department (Sole Source). **(Citywide)**

The apparatus being replaced has met established replacement criteria and will be sold by a sealed bid process or traded-in as part of the City's fire apparatus purchase agreement with Pierce Manufacturing. In addition, Fire and Medical will trade-in two units to further offset the price for the Air/Light Rehab unit.

The Fire and Medical Department and Purchasing recommend authorizing the purchase using the City's five-year purchase agreement with Pierce Manufacturing Inc., through their designated local dealer, Hughes Fire Equipment Inc., at \$502,264.75. This purchase is funded by the Capital-General Fund and authorized 2013 Public Safety Bonds.

*5-d. Three-Year Term Contract for Landscape Maintenance Services for Parks, Retention Basins and Sports Fields - Zones 1, 2, 3 and 4 for the Parks, Recreation and Community Facilities Department (PRCF). **(Citywide)**

These contracts provide landscape maintenance services for sports fields, parkways, medians, parks, retention basins or grounds adjacent to City facilities. The City has divided the landscaping into geographic areas known as Zones 1, 2, 3 and 4. PRCF has done an analysis to bring the work under this contract in-house and, at this time, contracting continues to be in the best financial interest of the City.

The evaluation committee recommends awarding the contract to the highest-scored proposal from Mariposa Landscape Arizona, Inc.; Zone 1, at \$1,435,319.57 annually; Zone 2, at \$959,183.45 annually; Zone 3, at \$974,364.20 annually; and Zone 4, at \$1,221,738.22 annually; based on estimated usage.

*5-e. Three-Year Term Contract for Plumbing Services for the Parks, Recreation and Community Facilities Department. **(Citywide)**

This contract will establish a list of pre-qualified plumbing contractors to perform plumbing services on various City facilities/projects on an as-needed basis.

The evaluation committee recommends awarding the contract to the four, highest-scored proposals from Mesa Energy Systems Inc.; RKS Plumbing and Mechanical Inc.; Sun Mechanical Inc.; and W.D. Manor Mechanical Contractors, Inc.; cumulatively not to exceed \$100,000 annually, based on estimated usage.

- *5-f. Purchase of Furniture for the Main Library as requested by the Library Services Department. **(Citywide)**

This purchase will provide seating and tables for two new rooms at the Main Library, Teen Room and ThinkSpot. The Library worked with several vendors utilizing cooperative contracts specifying their needs and goals with this project.

The Library Services Department and Purchasing recommend authorizing the purchase using the Northern Arizona University cooperative contract with Atmosphere Commercial Interiors, at \$50,876.25.

- 5-g. Five-Year Term Contract with CDW Government, LLC and SHI International Corp. for Information Technology Solutions and Services for Various Departments throughout the City. (Citywide)**

This contract will provide the City and participating agencies a full range of information technology solution products and services to meet varying requirements of governmental agencies. The scope of products and services available under these contracts include standard business and high-end workstations; laptop and notebook computers; network equipment; computer and network products and peripherals; monitors; various cloud, consulting, and technical support services; financing; various software products; and the contractors' comprehensive product offering.

Mesa, as the lead agency, has partnered with the National Intergovernmental Purchasing Alliance Company (National IPA) to lead this contract. The contract will be available to over 45,000 public agencies nationally. While no minimum volume is guaranteed to the suppliers, the estimated annual volume of IT Solutions purchased under this master agreement is approximately \$500 million per year. The City will receive rebates annually for administering and awarding this contract.

A committee representing the Police, and Information Technology Departments, City Manager's Office, Police-Information Technology, National IPA and Purchasing evaluated responses. The evaluation committee recommends awarding the contract to the highest-scored proposals from CDW Government, LLC and SHI International Corp., at \$3,100,000 annually, based on estimated usage.

- *5-h. One-Year Term Contract for Electrical and Lighting Supplies for the Materials and Supply Warehouse (for Citywide Departments). **(Citywide)**

Multiple departments use this Citywide contract for their miscellaneous electrical equipment and supplies.

The Business Services Department and Purchasing recommend authorizing the purchase using the State of Arizona cooperative contract with Border States Industries, Inc., at \$100,000, based on estimated usage.

- *5-i. Re-Award the Three-Year Term Contract for Microfilm Conversion Services for the Police Department. **(Citywide)**

This contract will provide services to convert Police Department data from microfilm to digital media. Police, Records Division use microfilm that is becoming worn and damaged. The previous vendor is unable to satisfactorily fulfill the contract requirements.

The Police Department and Purchasing recommend re-awarding the contract to the second highest scored proposal, ICM Conversions, at \$400,000 annually, based on estimated usage.

- *5-j. Purchase of Falcon District Brand Signage as requested by the Economic Development Department. **(Citywide)**

Continuing to build awareness and to promote the Falcon Field Economic Activity Area, this purchase for the Falcon District signage includes the installation of two branded monument signs to be located on Greenfield and Higley Roads, south of the 202. Additionally, the City will install utility and transit signal box wraps and will mount branded banners promoting aerospace, technology, and manufacturing on light poles around the airport.

The Economic Development Department and Purchasing recommend authorizing the purchase using the City of Peoria cooperative contract with YESCO Phoenix, at \$146,670.49. This purchase is funded by Local Streets Sales Tax.

- *5-k. Purchase of Three Replacement Rollback Trailers for the Transportation Department. **(Citywide)**

These trailers will replace three aging equipment trailers that are at the end of their service life. The trailers will meet the needs and safety requirements for transporting the large equipment required to perform street and right-of-way maintenance.

The Transportation Department and Purchasing recommend authorizing the purchase using the National Joint Powers Alliance contract with Empire Southwest (a Mesa business), at \$176,764.77. This purchase is funded by Local Streets Sales Tax.

- *5-l. One-Year Renewal to the Term Contract for Radio-Based Endpoint Encoders (for Water Meter Reading) for the Water Resources Department. **(Citywide)**

This contract provides Itron radio-based endpoint encoders and accessories purchased directly from Itron, Inc., the manufacturer. The endpoint stores 40 days of hourly reads to ensure data integrity and offers advanced customer side leak detection and reverse flow and tamper alarms. Water Utility installs approximately 540 radio-based endpoint encoders on new and existing meters annually.

The Water Resources Department and Purchasing recommend authorizing the renewal with Itron, Inc., at \$100,000, based on estimated usage.

- *5-m. Purchase of Water Treatment Plant Shop Tools and Equipment for the New Signal Butte Water Treatment Plant as requested by the Water Resources Department. **(Citywide)**

This purchase is for tools and equipment needed for the start-up and maintenance in the various shops at the new Signal Butte Water Treatment Plant.

The Water Resources Department and Purchasing recommend awarding the contract to the lowest, responsive and responsible bidders: Copper State Bolt & Nut Co. (a Mesa business); Glendale Industrial Supply, LLC, dba UNICOA Construction and Industrial Supply; Mallory Safety & Supply LLC; and W.W. Grainger, Inc.; cumulatively not to exceed \$153,000, based on estimated usage.

- *5-n. One-Year Renewal to the Term Contract for Fire Hydrant Water Meters for the Water Resources Department. **(Citywide)**

This contract provides 3" fire hydrant water meters to accurately measure construction water use of fire hydrants. The meters are installed by Water Utility staff to serve contractors and other customers needing to connect to City fire hydrants for temporary construction water service and dust control purposes.

The Water Resources Department and Purchasing recommend authorizing the renewal with Badger Meter Inc., dba National Meter Automation, at \$35,000, based on estimated usage.

- *5-o. Greenfield Water Reclamation Plant (GWRP), Phase III Expansion Guaranteed Maximum Price (GMP) No. 2. **(Citywide)**

The City of Mesa, Town of Gilbert, and Town of Queen Creek seek to provide an additional 14 million gallons per day annual average day flow of liquids and solids treatment capacity at the existing GWRP, complete with the required infrastructure, technology, and environmental features to ensure a reliable, efficient, and expanded plant to meet the current and future demands.

Staff recommends awarding the contract for the completion of this project to McCarthy Building Companies in the amount of \$120,302,333 and authorize a change order allowance \$6,015,117 (5%) for a total project amount of \$126,317,450. This project is funded by the Greenfield Water Reclamation Plant Joint Venture Fund, with contributions coming from its members based on usage. Mesa's portion of this GMP is \$72,229,521 and is funded by 2014 authorized Wastewater Bonds.

- *5-p. Sewer Pipe and Manhole Rehabilitation: Mesa Drive, Millet Avenue, Horne, and 6th Avenue. **(District 4)**

The existing sanitary sewer lines covered by this project were built during the 1950's and 1960's. The age of these pipes greatly increases their risk of failure and emergency repairs. This method of construction can be completed while leaving the pipe in place and without excavation. Similarly, the sewer manholes will be cleaned, repaired, and coated in place. Only the concrete adjustment rings will be removed and replaced.

Staff recommends awarding the contract for this project to the lowest, responsible bidder, B and F Contracting, Inc, in the amount of \$1,394,294.67, and authorize a change order allowance in the amount of \$139,430 (10%), for a total amount of \$1,533,724.67. Funding for this project is available from the 2014 Wastewater Bond Program.

- *5-q. Sidewalks at Railroad Crossing on Alma School. **(Districts 3 and 4)**

To continue to meet current railroad approach and clearance standards at the Alma School Road railroad crossing, additional safety improvements will need to be made. The project improvements for roadway and sidewalk approach at this location will facilitate greater public safety and needed clearances from railroad signals along with a smoother roadway crossing of the Union Pacific Railroad track. Mesa will participate in the federally-funded Railway-Highway Grade Crossing Program, and will be responsible

for adjusting the existing concrete sidewalks around the proposed cantilevers and gates, and installing concrete medians.

This project was previously awarded by Council on July 10, 2017, however, the previously selected contractor could not comply with the federal requirements and the project was released for bid a second time.

Staff recommends awarding the contract to the lowest, responsible bidder, AJP Electric, in the amount of \$149,494, plus an additional \$14,949 (10%) as a change order allowance, for a total amount of \$164,443. Funding is available from the Local Streets Sales Tax, of which 94.3% will be reimbursed by Arizona Department of Transportation (Federal) Grant under the Railway-Highway Grade Crossing.

6. Take action on the following resolutions:

- *6-a. Approving and authorizing the City Manager to submit the Second Substantial Amendment to the Fiscal Year 2017/2018 Annual Action Plan to the U.S. Department of Housing and Urban Development related to the allocation of funding obtained under the Community Development Block Grant (CDBG) program. This Amendment will allow for reallocation of \$600,000 in CDBG funds from the Senior Center Renovation Project (247 North Macdonald) to the Eagles Park Project (828 East Broadway Road). **(District 4)** – Resolution No. 11088.
- *6-b. Approving and authorizing the City Manager to enter into a Grant Agreement with the Arizona Department of Public Safety to accept \$1,335,284 in Victims of Crime Act (VOCA) grant funds. The finding will be used for salaries and expenses for the Mesa Prosecutors Office, Victim Services Unit for a three-year period. **(Citywide)** – Resolution No. 11089.
- *6-c. Approving and authorizing the City Manager to enter into a Lease Agreement with New Cingular Wireless PCS for a cellular site on a portion of 5950 East Virginia Street, also known as Mesa Fire Station 214. **(District 5)** – Resolution No. 11090.
- *6-d. Approving and authorizing the City Manager to enter into a Development Agreement for City-Share Reimbursement with PPGN-Ray, LLLP, for the reimbursement of \$100,568 for regional street and street lighting improvements that are being required by the City in conjunction with a proposed residential development known as Crismon Road at PPGN, located at 5461 South Ellsworth Road. **(District 6)** – Resolution No. 11091.
- *6-e. Approving and authorizing the City Manager to enter into an Intergovernmental Agreement with the Maricopa County, Department of Transportation for the pavement rehabilitation of Adobe Road from Higley Road to Recker Road. The City will contribute an estimated \$54,417 for the portion of the project that is within City boundaries that will be funded from the 2013 Streets Bond Program. **(District 5)** – Resolution No. 11092.
- *6-f. Approving and authorizing the City Manager to enter into First Amendments to the Development Agreement, Ground and Air Lease, and License Agreement with 3W Management, LLC, to facilitate the development of, and job creation and retention at, the City-owned property generally located at the southwest corner of Main Street and South Pomeroy and 34 South Pomeroy, which is the development commonly known as The GRID. **(District 4)** – Resolution No. 11093.

7. Introduction of the following ordinance and setting February 26, 2018 as the date of the public hearing on this ordinance:

- *7-a. **ZON17-00323 (District 5)** The 8800 to 8900 blocks of East Main Street (south side). Located west of Red Mountain Freeway on the south side of Main Street (16.4± acres). Rezoning from RS-43 and GC to GC-PAD; and Site Plan Review. This request will allow for the development of an RV dealership and storage facility. Jeff Welker, Welker Development Resources, applicant; Roger D. Overson, owner.

Staff Recommendation: Approval with conditions

P&Z Board Recommendation: Approval with conditions (Vote: 6-0)

8. Discuss, receive public comment, and take action on the following ordinances:

- *8-a. **ZON17-00309 (District 2)** The 5200 block of East Inverness Avenue (south side). Located east of Higley Road south of the US60 Freeway (1.9 ± acres). Rezoning from RM-3-PAD to LC; and Site Plan Review. This request will allow for the development of a commercial building. John Schoenauer, HD Management, applicant; Sevilla, LLC, owner. – Ordinance No. 5419.

Staff Recommendation: Approval with conditions

P&Z Board Recommendation: Approval with conditions (Vote: 7-0)

- *8-b. **ZON17-00283 (District 6)** The 7100 to 7300 blocks of East Ray Road (north side). Located east of Power Road on the north side of Ray Road (56.0± acres). Rezone from LI-AF to LI-AF-PAD. This request will allow for the development of an industrial subdivision. Omar Cervantes, XCL Engineering, LLC, applicant; Phx-Mesa Gateway Airport 193, LLC, owner. – Ordinance No. 5420.

Staff Recommendation: Approval with conditions

P&Z Board Recommendation: Approval with conditions (Vote: 7-0)

- *8-c. **ZON17-00432 (District 3)** The 800 and 900 blocks of West Southern Avenue (south side), the 1200 and 1300 blocks of South Extension Road (west side), and the 800 and 900 blocks of West Grove Avenue (north side). Located at the southwest corner of Southern Avenue and Extension Road (19.3 ± acres). PAD Amendment; Site Plan Modification. This request will allow the development of a new multiple-residence building in an existing multiple-residence complex. Reese Anderson, Pew and Lake, PLC, applicant; Edward B. Frankel, Trustee of the Frankel Family Trust, owner. – Ordinance No. 5421.

Staff Recommendation: Approval with conditions

P&Z Board Recommendation: Approval with conditions (Vote: 7-0)

9. Take action on the following subdivision plat:

- *9-a. "Allred Ranch" **(District 2)** The 2900 to 3100 blocks of East Southern Avenue (north side), and the 900 to 1200 blocks of South Los Alamos (west side). Located east of

Lindsay Road on the north side of Southern Avenue. 108 RSL-4.5 PAD lots (25± acres).
KB Home Phoenix, Inc., developer; Dan Auxier, EPS Group, engineer.

Items not on the Consent Agenda

10. Items from citizens present.

There were no items from citizens present.

11. Adjournment.

Without objection, the Regular Council Meeting adjourned at 5:57 p.m.





JOHN GILES, MAYOR

ATTEST:



DEE ANN MICKELSEN, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the City Council of Mesa, Arizona, held on the 5th day of February, 2018. I further certify that the meeting was duly called and held and that a quorum was present.



DEE ANN MICKELSEN, CITY CLERK

js



AGREEMENT PURSUANT TO SOLICITATION

CITY OF MESA AGREEMENT NUMBER 2018011
INFORMATION TECHNOLOGY SOLUTIONS & SERVICES

CITY OF MESA, Arizona ("City")

Department Name	City of Mesa – Purchasing Division
Mailing Address	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address	20 East Main St, Suite 400 Mesa, AZ 85201
Attention	Sharon Brause, CPPO, CPPB, CPCP Senior Procurement Officer
E-Mail	Sharon.Brause@MesaAZ.gov
Phone	(480) 644-2815
Fax	(480) 644-2655

AND

CDW GOVERNMENT LLC, ("Contractor")

Mailing Address	230 N. Milwaukee Ave Vernon Hills, IL 60061-9740
Remit Address	75 Remittance Dr, Suite #1515 Chicago, IL 60675-1515
Attention	Jumana DiHu, Program Manager
E-Mail	jumdihu@cdwg.com
Phone	(312) 547-2495
Fax	(312) 705-9437
Website	www.cdwg.com

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement pursuant to solicitation ("Agreement") is entered into this 28th day of February, 2018, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and **CDW GOVERNMENT LLC**, an Illinois limited liability company ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

- A. The City issued solicitation number **2018011** ("Solicitation") for **INFORMATION TECHNOLOGY SOLUTIONS & SERVICES**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

- 1. **Term**. This Agreement is for a term beginning on **March 1, 2018** and ending on **February 28, 2023**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
 - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of **two (2), one (1) year** periods. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a Contractor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.3 **Delivery**. Delivery shall be made to the location(s) contained in the Scope of Work within thirty (30) days after receipt of an order. Title to Products and risk of loss or damage during shipment pass from Contractor to City upon delivery to the destination specified on the applicable purchase order (F.O.B. Destination, freight prepaid and allowed). Contractor agrees to deliver all products to be delivered F.O.B. destination, freight pre-paid and allowed to various locations throughout the City. In many cases within the City, the Contractor may be asked to deliver all products to the front counter within a given department. For special orders, the Parties agree to negotiate in good faith an alternative delivery date when necessary. Notwithstanding the foregoing, title to software will remain with the applicable licensor(s), and the City's rights therein are contained in the license agreement between such licensor(s) and the City.
- 2. **Scope of Work**. The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise

stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

The Agreement is based on the Solicitation and Response which are hereby incorporated by reference into the Agreement as if written out and included herein. In addition to the requirements specifically set forth in the Scope of Work, the Parties acknowledge and agree that the Parties shall perform in accordance with all terms, conditions, specifications and other requirements set forth within the Solicitation and Response unless modified herein.

3. **Orders.** Orders must be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) procurement card; (iii) Delivery Order or Blanket Purchase Order for a requirements contract where multiple as-needed orders will be placed with the Contractor; (iv) Executed Statement of Work (SOW); or (v) Executed Cloud Service Order (CSO) Form. The City may use the Internet to communicate with Contractor and to place orders as permitted under this Agreement. Unless explicitly stated in a separate writing executed by the Parties, the terms and conditions on any order form, quote, or similar document provided by Contractor to the City will not take precedence over the language set forth in this Agreement or any of the documents outlined in Section 4 below.
4. **Document Order of Precedence.** In the event of any inconsistency between the terms of the body of the Agreement, Exhibits, Solicitation, and Response, the language of the documents will control in the following order.
 - a. Amendments to the Agreement
 - b. Agreement
 - c. Exhibits
 1. Mesa Standard Terms & Conditions (Exhibit C)
 2. Pricing (Exhibit B)
 3. Scope of Work (Exhibit A)
 4. Other Exhibits not listed above
 - d. Solicitation including any addenda
 - e. Contractor's Response
5. **Payment.** Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B** ("Pricing") in consideration of Contractor's performance of the Scope of Work during the Term.
6. **Pricing.** Contractor's pricing shall be in the format of a minimum percentage discount off a verifiable price index. Contractor may submit discounts for various manufacturers. At the time of purchase, Contractor may offer deeper discounts beyond the discounted price list, based on volume or other factors, as applicable. Minimum discounts will remain firm during the entirety of the Term of the Agreement, unless the Contractor requests to increase its discount percentage, and Pricing will include all charges that may be incurred in fulfilling requirement(s). In addition to decreasing prices for the balance of the Term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. In the event a product is discontinued, Contractor will provide a product of the same or greater functionality, utilizing the discount structure.

It is the Contractor's responsibility to provide the City with an up-to-date price list for the duration of the Agreement.

 - 6.1 **Prices.** All pricing discounts shall be firm for the Term and all extensions or renewals of the Term except where otherwise provided in this Agreement, and will include all costs of the Contractor providing the materials/service including transportation, insurance and

warranty costs. No fuel surcharges will be accepted unless allowed in this Agreement. The City shall not be invoiced at prices higher than those stated in the Agreement.

No price modifications will be accepted without proper request by the Contractor and response by the City's Purchasing Division.

- 6.2 **Price Adjustment.** Any requests for reasonable price adjustments must be submitted in accordance with this Section. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. There is no guarantee the City will accept a price adjustment; therefore, Contractor should be prepared for the Pricing to be firm over the Term of the Agreement. The City is only willing to entertain price adjustments based on an increase to Contractor's actual expenses or other reasonable adjustment in providing the services/materials under the Agreement. If the City agrees to the adjusted price terms, the City shall issue written approval of the change.

During the sixty (60) day period prior to the expiration of the then-current term date of the Agreement, the Contractor may submit a written request to the City to allow an increase to the prices in an amount not to exceed the twelve (12) month change in the **Consumer Price Index for All Urban Consumers** (CPI-U), US City Average, All Items, Not Seasonally Adjusted as published by the U.S. Department of Labor, Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). The City shall review the request for adjustment and respond in writing; such response and approval shall not be unreasonably withheld.

- 6.3 **Renewal and Extension Pricing.** Any extension of the Agreement will be at the same pricing as the initial term. If the Agreement is renewed in accordance with Section 1, pricing may be adjusted for amounts other than inflation that represent actual costs to the Contractor based on the mutual agreement of the Parties. Contractor may submit a request for a price adjustment along with appropriate supporting documentation demonstrating the cost to the Contractor. Renewal prices shall be firm for the term of the renewal period and may be adjusted thereafter as outlined in the Subsection 6.2. There is no guarantee the City will accept a price adjustment.

- 6.4 **Invoices.** Payment will be made to Contractor following the City's receipt of a properly completed invoice. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice should contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or delivery;
- g. Description of materials or services provided;
- h. If materials provided, the quantity delivered and pricing of each unit;
- i. Applicable taxes; and
- j. Total amount due.

- 6.5 **Payment of Funds.** Contractor acknowledges the City may, at its option and where available use a Procurement Card/e-Payables to make payment for orders under the Agreement; otherwise, payment will be through a traditional method of a check or Electronic Funds Transfer (EFT) as available.

- 6.6 **Disallowed Costs, Overpayment.** If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

7. **Insurance.**

- 7.1 Contractor must obtain and maintain at its expense throughout the Term of the Agreement, at a minimum, the types and amounts of insurance set forth in this Section 7 from insurance companies authorized to do business in the State of Arizona; the insurance must cover the materials/service to be provided by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insured, as evidenced by providing either an additional insured endorsement or proper insurance policy excerpts.
- 7.2 Nothing in this Section 7 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit any indemnity promise(s) contained in the Agreement.
- 7.3 The City does not warrant the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of performance under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.
- 7.4 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the Term of the Agreement.
- 7.5 Prior to the execution of the Agreement, Contractor will provide the City with a Certificate of Insurance (using an appropriate "ACORD" or equivalent certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of the policies, endorsements, or notices relating thereto required under the Agreement.
- 7.6 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder and/or an additional insured, Contractor agrees no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.
- 7.7 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.
- 7.8 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Management Division.
- 7.9 **Types and Amounts of Insurance.** Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:
- 7.9.1 Worker's compensation insurance in accordance with the provisions of Arizona law. If Contractor operates with no employees, Contractor must provide the City

with written proof Contractor has no employees. If employees are hired during the course of this Agreement, Contractor must procure worker's compensations in accordance with Arizona law.

7.9.2 The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence/\$2 million aggregate Commercial General Liability insurance, including Contractual Liability. For Commercial General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.

7.9.3 Automobile liability, bodily injury and property damage with a limit of \$1 million per occurrence including owned, hired and non-owned autos.

8. **Requirements Contract.** Contractor acknowledges and agrees the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within three (3) business days of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of materials, or performance of services. The City reserves the right to purchase contracted items through other sources if determined in the best interests of the City to do so.
9. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the Contractor at the address listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions that are attached to the Agreement as **Exhibit C**.
10. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
 - b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
 - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
 - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
11. **Mesa Standard Terms and Conditions.** **Exhibit C** to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
12. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the

Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.

13. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.

Exhibits to this Agreement are the following:


- (A) Scope of Work / Technical Specifications
- (B) Pricing
- (C) Mesa Standard Terms and Conditions

14. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
15. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.
16. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

By executing below, each Party acknowledges that it understands, approves, and accepts all of the terms of the Agreement and the attached exhibits.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF MESA, ARIZONA

By:  Digitally signed by
Edward Quedens
Location: City of Mesa
Business Services
Date: 2018.03.02
13:18:03 -07'00'

Printed Name

Title

Date

CDW GOVERNMENT LLC

By: 

Christina V. Rother

Printed Name

President

Title

March 1, 2018

Date

REVIEWED BY:
By: 

EXHIBIT A SCOPE OF WORK

1. **MINIMUM REQUIREMENTS.** Contractor must meet the following minimum qualifications:
 - a. A full range of information technology solution products and services to meet varying requirements of governmental agencies.
 - b. Have a strong national presence as a computer solutions provider.
 - c. Have a distribution model capable of delivering products, free of charge, in a timely manner on a nationwide basis.
 - d. Have a demonstrated sales presence.
 - e. Ability to provide a toll-free telephone and state of the art electronic facsimile and internet ordering and billing capabilities.
 - f. Be able to meet the minimum requirements of the cooperative purchasing program detailed herein.

2. **ORDERING.** Although the City is open to alternate ordering methods, the primary methods for customers placing orders with the Contractor is through the following:
 - a. Online
 - b. Telephone
 - c. Fax
 - d. Email

3. **SCOPE OF PRODUCTS.** Contractor will provide the ability to purchase a comprehensive, wide variety of Information Technology Solution Products including, but not limited to, the following categories:
 - a. **Personal Computer Systems:** National brand name desktop PCs, notebooks and laptops from Enterprise Tier and Middle Tier Contractors that are business related computers, manufactured by companies, such as, Apple, COMPAQ, Dell, Gateway, Hewlett Packard, IBM / Lenovo and Toshiba.
 - b. **Standard Business Workstation:** These will be used for typical tasks, which will include word processing, spreadsheet analysis, database management, business graphics, statistical analysis, internet, and other office automation activities. Product will include the operating system license, software media and documentation in the hardware shipment.
 - c. **High End Workstation:** These will be used by application developers using GIS, CASE or other high-level language development tools, Computer Aided Design and Drafting professional, Internet Application developers or other sophisticated application work. Product will include the operating system license, software media and documentation in the hardware shipment.
 - d. **Laptop Computer or Notebook:** These will be used by traveling or remote access users for typical office automation and business productivity use. With a port replicator or docking station, it may also be used as a standard desktop. Product will include the operating system license, software media and documentation in the hardware shipment.
 - e. **Network Equipment:** This includes equipment primarily used for communications over an IP network. This includes layer 2 and layer 3 switches, routers, area wireless access points, point-to-point wireless access, optics, media interfaces (i.e. serial, T1, T3, OC3) and fiber channel. Class of equipment should include home office, small and medium business, and enterprise. Contractors may include, but not limited to, Cisco Systems, Dell, Juniper Networks, HP, Extreme Networks, Enterasys Networks, D-Link, Netgear, and Brocade Communications Systems.

EXHIBIT A
SCOPE OF WORK

- f. Monitors: These will include plug and play compatible monitors that are manufactured for the above systems and/or any other brand that may be specifically called for by the ordering entity and which meet the most current UL and OSHA requirements.
 - g. Computer and Network Products and Peripherals: Complete availability of major manufacturers Product lines on items such as, but not limited to RAM, graphic accelerator cards, network interface cards, cables, printers, scanners, keyboards, drives, memory cards, cables, batteries, etc.
 - h. Services:
 - i. Services means such as, consulting, technical support, trade-ins, repair, design, analysis, configuration, implementation, installation, training, and maintenance, etc. In addition, services which are related to the design, use or operation of the Products being purchased such as system configurations, testing, hardware/software installation, upgrades, imaging, etc. as described generally in this Agreement and as more particularly described in a Statement of Work or SOW (meaning a document in electronic or written form that is signed and delivered by each of the Parties for the performance of Services.
 - ii. Cloud Computing means third party cloud computing and storage services, where Contractor acts as a rebiller only and has no control over the delivery of the cloud computing and storage services. City acknowledges that the cloud service provider, and not Contractor, will be responsible for performance of the Cloud Services. Also, before Contractor can sell cloud computing and/or storage services from a third party to the City, City must execute an agreement governing said cloud computing and/or storage services with the third-party cloud services provider.
 - i. Comprehensive Product Offering: Contractor's catalog and Services set forth in Exhibit B shall be available. The City reserves the right to accept or reject any or all items offered.
 - j. Financing: Options available such as lease programs and conditional sales contracts.
4. **LICENSES**. The City may be required to sign a separate agreement, rider or End User Licensing Agreement ("EULA"), or such other terms as required by manufacturers, software publisher, or cloud service provider.
5. **DEFECTIVE PRODUCT**. All defective Products shall be replaced and exchanged by the Contractor. The cost of transportation, re-shipping or other like expenses shall be paid by the Contractor and in the case of certain, special orders, other reasonable charges may be paid by the Contractor as defined in the order or as otherwise agreed to by the Parties. All replacement Products must be received by the City within seven (7) days of initial notification, when such products are in Contractor stock; if replacement Product is not in Contractor's stock, Contractor will use commercially reasonable efforts to order the product within one (1) business day of the initial notification from the City and will ensure product is received within seven (7) days after Contractor's receipt of the product.

EXHIBIT B
PRICING

Item #	Product	Product / Group	Discount	Manufacturer Name
1)	Group 1 - Systems	1) Desktops	2.10%	All
		2) Notebooks	2.10%	All
		3) Tablets	2.25%	All
		4) Servers (1 Processor, 2 Processor, 4+ Processor, Blade, Tower, Unix, Handhelds, etc.)	4.00%	All
2)	Group 2 - Input Devices	5) Keyboards	6.75%	All
		6) Mice	6.75%	All
		7) Imaging Scanners	3.00%	All
		8) POS Scanners	3.00%	All
		9) Pointing Devices	3.50%	All
		10) Bar Code Readers	4.25%	All
		11) Audio Input	15.00%	All
		12) Input Adapters	5.00%	All
		13) PC and Network Cameras	5.50%	All
		14) Input Cables	15.00%	All
		15) Input Accessories	6.75%	All
3)	Group 3 - Output Devices	16) Displays	3.50%	All
		17) Printers	3.00%	All
		18) Inkjet Printers	3.00%	All
		19) Inkjet Photo Printers	3.00%	All
		20) Laser Printers	3.00%	All
		21) Label Printers	4.25%	All
		22) Dot Matrix Printers	3.00%	All
		23) Multi-Function Printers	3.00%	All
		24) Wide Format Printers	3.00%	All
		25) Multi-Function Inkjet Printers	3.00%	All
		26) Wide Format Printers	3.00%	All
		27) Fax Machine Printers	3.00%	All
		28) Printer Accessories	3.00%	All
		29) Projectors	3.50%	All
		30) Projector Accessories	3.50%	All
31) Audio Input	15.00%	All		
32) Video Cards	3.50%	All		

EXHIBIT B
PRICING

		33) Sound Cards	3.50%	All
		34) Output Accessories	6.75%	All
		35) Printer Consumables	3.00%	All
4)	Group 4 - Memory	36) Desktop	13.00%	All
		37) Flash	5.50%	All
		38) Networking	13.00%	All
		39) Notebook	13.00%	All
		40) Printer / Fax	13.00%	All
		41) Server	13.00%	All
5)	Group 5 - Storage Devices	42) Adapters Fiber Channel	5.50%	All
		43) Adapters FireWire / USB	5.50%	All
		44) Adapters IDE/ATA/SATA	5.50%	All
		45) Adapters RAID	5.50%	All
		46) Adapters SCSI	5.50%	All
		47) Bridges & Routers	5.50%	All
		48) Disk Arrays	5.50%	All
		49) Disk Arrays JBOD	5.50%	All
		50) Drives Magneto-Optical	5.50%	All
		51) Drives Removable Disks	5.50%	All
		52) Fiber Channel Switches	5.50%	All
		53) Hard Disks - External	5.50%	All
		54) Hard Disks - Fiber Channel	5.50%	All
		55) Hard Disks - IDE/ATA/S	5.50%	All
		56) Hard Disks - Notebook	5.50%	All
		57) Hard Disks - SCSI	5.50%	All
		58) Networking Accessories	5.50%	All
		59) Optical Drives - CD-ROM	5.50%	All
		60) Optical Drives - CD-RW	5.50%	All
		61) Optical Drives - DVD-CD	5.50%	All
		62) Optical Drives - DVD-RW	5.50%	All
		63) Storage Accessories	5.00%	All
		64) Storage - NAS	5.00%	All
		65) Storage - SAN	5.00%	All
		66) Tape Autoloaders -AIT	5.00%	All
		67) Tape Autoloaders - DAT	5.00%	All
		68) Tape Autoloaders - DLT	5.00%	All
		69) Tape Autoloaders - LTO	5.00%	All
		70) Tape Drives - 4mm	5.00%	All

EXHIBIT B
PRICING

		71) Tape Drives - 8mm/VXA	5.00%	All
		72) Tape Drives - AIT	5.00%	All
		73) Tape Drives - DAT	5.00%	All
		74) Tape Drives - DLT	5.00%	All
		75) Tape Drives - LTO/Ultrium	5.00%	All
		76) Tape Drives SDLT	5.00%	All
		77) Tape Drives - Travan	5.00%	All
6)	Group 6 - Network Equipment	78) 10/100 Hubs & Switches	5.50%	All
		79) Bridges & Routers	5.50%	All
		80) Gigabit Hubs & Switches	5.50%	All
		81) Concentrators & Multiplexers	5.50%	All
		82) Hardware Firewalls	5.50%	All
		83) Intrusion Detection	5.50%	All
		84) KVM	4.00%	All
		85) Modems	5.50%	All
		86) Network Test Equipment	5.50%	All
		87) Network Adapters	5.50%	All
		88) Network Cables	15.00%	All
		89) Network Accessories	5.50%	All
		90) Repeaters & Transceivers	5.50%	All
		91) Wireless LAN Accessories	5.50%	All
		92) Token Authentication	5.50%	All
		93) 10G Fiber Optic Transceivers	5.50%	All
94) 1G Fiber Optic Transceivers	5.50%	All		
7)	Group 7 - Software	95) Licensing Packages (e.g. Microsoft)	4.00%	All
		96) Licensing Backup	4.00%	All
		97) Licensing Barcode/OC	4.00%	All
		98) Licensing Business Application	4.00%	All
		99) Licensing CAD/CAM	4.00%	All
		100) Licensing - Cloning	4.00%	All
		101) Licensing - Computer Services	4.00%	All
		102) Licensee - Database	4.00%	All
		103) Licensing - Development	4.00%	All
		104) Licensing - Entertainment	4.00%	All
		105) Licensing - Financial	4.00%	All
		106) Licensing - Flow Chart	4.00%	All
		107) Licensing - Graphic Design	4.00%	All
		108) Licensing - Handheld	4.00%	All

EXHIBIT B
PRICING

		109) Licensing - Network OS	4.00%	All
		110) Licensing - OS	4.00%	All
		111) Licensing - Personal Organization	4.00%	All
		112) Licensing - Presentation	4.00%	All
		113) Licensing - Reference	4.00%	All
		114) Licensing - Report Analysis	4.00%	All
		115) Licensing - Spreadsheet	4.00%	All
		116) Licensing - Utilities	4.00%	All
		117) Licensing - Warranties	4.00%	All
		118) Licensing - Web Development	4.00%	All
		119) Licensing - Word Processing	4.00%	All
		120) Software - Backup	4.00%	All
		121) Software - Barcode / OCR	4.00%	All
		122) Software - Business Application	4.00%	All
		123) Software - CAD/CAM	4.00%	All
		124) Software - Cloning	4.00%	All
		125) Software - Computer Services	4.00%	All
		126) Software - Database	4.00%	All
		127) Software - Development	4.00%	All
		128) Software - Entertainment	4.00%	All
		129) Software - Financial	4.00%	All
		130) Software - Flow Chart	4.00%	All
		131) Software - Graphic Design	4.00%	All
		132) Software - Handheld	4.00%	All
		133) Software - OS	4.00%	All
		134) Software - Personal Organization	4.00%	All
		135) Software - Presentation	4.00%	All
		136) Software - Reference	4.00%	All
		137) Software - Report Analysis	4.00%	All
		138) Software - Spreadsheet	4.00%	All
		139) Software - Utilities	4.00%	All
		140) Software - Warranties	4.00%	All
		141) Software - Web Development	4.00%	All
		142) Software - Word Processing	4.00%	All
8)	Group 8 - Media Supplies	143) Media - 4mm tape	5.50%	All
		144) Media - AIT tape	5.50%	All
		145) Media - DAT tape	5.50%	All
		146) Media - DLT tape	5.50%	All

EXHIBIT B
PRICING

		147) Media LTO / Ultrium tape drive	5.50%	All
		148) Media - Magneto - Optical	5.50%	All
		149) Media - Optical	5.50%	All
		150) Media - SLR tape	5.50%	All
		151) Media - Travan tape	5.50%	All
		152) Media - VXA tape	5.50%	All
		153) Media - zip	5.50%	All
9)	Group 9 - Collaboration & IP Telephony	154) IP phones	4.25%	All
		155) Video conferencing products	4.25%	All
		156) Voice gateways / servers	4.25%	All
		157) Headsets	4.25%	All
		158) Audio conferencing products	4.25%	All
		159) Analog phones	4.25%	All
		160) Accessories	4.25%	All
10)	Group 10 - Other	161) Advanced Integration	3.00%	All
		162) Asset Disposal	3.00%	All
		163) Asset Management	3.00%	All
		164) Cables	15.00%	All
		165) Cables - custom	15.00%	All
		166) Cables - printer	15.00%	All
		167) Complex warranties	3.00%	All
		168) Desktop Accessories	6.75%	All
		169) Display Accessories	3.50%	All
		170) Electronic Services	3.00%	All
		171) Handheld Accessories	6.75%	All
		172) Imaging Accessories	6.75%	All
		173) Imaging - Camcorders	3.50%	All
		174) Imaging - Digital Cameras	3.50%	All
		175) Internal Lab Service	3.00%	All
		176) Lab fees	3.00%	All
		177) Managed Services	3.00%	All
		178) Miscellaneous solutions	3.00%	All
		179) Mounting hardware for vehicles	2.50%	All
		180) Networking Warranties	3.50%	All
181) Notebook Accessories	2.50%	All		
182) Notebook Batteries	5.00%	All		
183) PC Lab order services	3.00%	All		
184) POS Accessories	4.25%	All		

EXHIBIT B
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	185) POS Displays	4.25%	All	
	186) Power Accessories	5.00%	All	
	187) Power Surge Protection	5.00%	All	
	188) Power UPS	5.00%	All	
	189) Server Accessories	4.00%	All	
	190) Service Charge	2.00%	All	
	191) System Components	13.00%	All	
	192) Training Courses	3.00%	All	
	193) Training Reference Manuals	3.00%	All	
	194) Warranties - Electronic	3.00%	All	
	195) iPad / Tablet Stylus	6.75%	All	
	196) Mouse / Wrist Pads	6.75%	All	
	197) Security Locks and Hardware	6.75%	All	
	198) Tools	6.75%	All	
	199) Document Scanner Accessories	3.00%	All	
	200) Flatbed Scanners	3.00%	All	
	201) Mobile Scanners	3.00%	All	
	202) Network Scanners	3.00%	All	
	203) Sheet fed Scanners	3.00%	All	
	204) Wide Format Scanners	3.00%	All	
	205) Workgroup / Department Scanner	3.00%	All	
	206) Build to Order Desktops	2.10%	All	
	207) Nettop	3.00%	All	
	208) Point of Sale	4.25%	All	
	209) Ultra Small Form Factor	2.10%	All	
	210) Apple / Mac Memory Upgrades	13.00%	All	
	211) Chips / SIMMs/SIPPs / ROMs	13.00%	All	
	212) Computer Cases	13.00%	All	
	213) CPUs / Fans	13.00%	All	
	214) Memory Accessories	13.00%	All	
	215) Motherboards / Chassis	13.00%	All	
	216) 1 - 2 port Serial Boards	13.00%	All	
	217) 3+ port Serial Boards	13.00%	All	
	218) Console Server	4.00%	All	
	219) Device Server	4.00%	All	
	220) Terminal Server	4.00%	All	
	221) Content Management	4.00%	All	
	222) Firewall / VPN Appliances	5.50%	All	

EXHIBIT B
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223) Multifunction Security Appliances	5.50%	All
224) Network Camera Accessories	5.50%	All
225) Network Cameras	5.50%	All
226) Physical/Environmental Security	5.50%	All
227) Security Appliance Accessories	5.50%	All
228) Security Tokens	5.50%	All
229) Unified Threat Management	5.50%	All
230) 2-way Radios / Walkie Talkies	6.75%	All
231) Apple Notebooks	2.50%	All
232) Convertible PCs / Slate PCs / iPad	2.25%	All
233) iPad	2.25%	All
234) Slate Tablet Computers	2.25%	All
235) GPS / PDA	6.75%	All
236) Wireless Communication Devices	2.50%	All
237) Batteries	5.00%	All
238) Power Supplies / Adapters	5.00%	All
239) Rackmount Equipment	5.00%	All
240) Remote Power Management	5.00%	All
241) Surge Suppressors	5.00%	All
242) UPS / Battery Backup	5.00%	All
243) 14" & smaller LCD Display	3.50%	All
244) 15-19" LCD Display	3.50%	All
245) 15-19" Wide LCD Display	3.50%	All
246) 15-19" Wide LED Display	3.50%	All
247) 20-30" LCD Display	3.50%	All
248) 20-30" Wide LCD Display	3.50%	All
249) 20-30" Wide LED Display	3.50%	All
250) PCoIP and Zero Client Displays	3.50%	All
251) Arm Mounts	3.50%	All
252) Ceiling Mounts	3.50%	All
253) Combo Mounts	3.50%	All
254) Desktop Stands / Risers	3.50%	All
255) Flat Wall Mounts	3.50%	All
256) Mount Accessories	3.50%	All
257) Pole Display	4.25%	All
258) Stands / Carts / Feet	3.50%	All
259) Tilt Wall Mounts	3.50%	All

**EXHIBIT B
PRICING**

		260) C-Cure Products	4.00%	All
		261) Istar Products	5.50%	All
11)	Group 11 - Services	SERVICE	STANDARD HOURLY RATE	DISCOUNT FROM STANDARD RATE
		Design and Analysis	Please see CDW•G's Professional Services Offering below for descriptions of CDW•G's Professional Services.	
		Configuration		%
		Implementation		%
		Installation		%
		Training		%
		Maintenance & Support		%
		CDW Configuration Services		5%
12)	Group 12 - Additional Products/Services Not Identified	Please see CDW•G's Configuration Services Pricelist below for descriptions and pricing of CDW•G's Configuration Services.		
		Apple Products for eligible Government and Educational Entities		0.50%

CDW•G has conformed to the National Pricing structure aligning to National IPA's product taxonomy, however, CDW•G will manage the resultant contract according to CDW•G's Product Tree below, which shall govern all purchases and provides more breadth and a more complete representation of the CDW•G Catalog. All discounts will be applied by product category listed below to CDW•G's Nationally Advertised Pricing which is publicly verifiable at www.cdwg.com.

CDW•G Product Tree Categories	Discount
Accessories	6.75%
Power, Cooling & Racks	5.00%
Desktop Computers	3.00%
PC Compatible Desktop Computer	2.10%
PC Compatible Workstation	3.00%
Blade PCs	3.00%
RISC Processor Workstation	3.00%
Thin Clients	3.00%
Web TV Access Unit	3.00%

EXHIBIT B
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Windows Based Terminals	3.00%
Data Storage / Drives	5.50%
Enterprise Storage	5.00%
Point of Sale/Data Capture	4.25%
Servers & Server Management	4.00%
Services (CDW Delivered)	0.00%
Notebook/Mobile Devices	2.50%
Notebook Computers	2.10%
Notebook Accessories	2.50%
Wireless Communication Devices	2.50%
Convertible PCs/Slate PCs/iPAD	2.25%
Chromebooks	0.00%
Netcomm Products	5.50%
Gigabit Switch	6.00%
Modular Switch Chassis	6.00%
Modular Switches	5.50%
Carts and Furniture	5.00%
Printing & Document Scanning	3.00%
Services (3rd Party Delivered)	0.00%
Warranties-Product Protection	3.50%
Software	4.00%
Collaboration Hardware	4.25%
Memory/System Components	13.00%
Video-Projection-Pro Audio	3.50%
Cables	15.00%
CDW Configuration Services	5.00%
Apple Products for Eligible Entities	.50%

CDW•G will work with Manufacturers and the City or Participating Agencies, as applicable, post award to ensure they are aware of and participating in special manufacturer programs.

CDW•G Account Managers will work with the City or Participating Agencies, as applicable, post award to determine if large orders qualify to receive additional discounts. These discounts are dependent on order size, delivery schedule and will be negotiated with Manufacturers.

As Apple's largest Corporate Channel Partner in the U.S., CDW•G has negotiated to offer Apple Products to Eligible Government and Educational Entities at the discount listed above and in the pricing table in this Exhibit B.

**EXHIBIT B
PRICING**

CDW•G Professional Services Offering			
Major Metro Service Areas			
Washington, DC	Raleigh	Madison	
New York City	Houston	Wausau	
Metro			
Los Angeles	Tampa	Milwaukee	
San Francisco	Atlanta	Appleton	
San Diego	National	Grand Rapids	
Boston Metro	Dallas	Indianapolis	
Chicago	Cincinnati	Cleveland	
Federal	Detroit		
Philadelphia	Minneapolis		
Seattle	St. Louis/KC		
	Denver		
	Nashville		
	Portland		
<p>Services apply to both CDW•G executed professional services and services which are sub-contracted through a CDW•G authorized third party provider. Hourly or fixed rates will be negotiated based on the customer, geography, scope of the professional service engagement, and level of engineer required to perform the service. CDW•G will create a Statement of Work (SOW) detailing the exact scoping and pricing of the Services to be provided, which will be executed by CDW•G and the National IPA member prior to the start of Services. Sample SOW is included in our proposal. Expenses (T and E) may be an additional consideration depending on project specifics.</p>			
Solution Domain	Discipline	Technology Domain	Role
Datacenter	Storage	Data Migration	Senior Consulting Engineer
		EMC	Senior Consulting Engineer
		IBM	Senior Consulting Engineer
		VMWare	Senior Consulting Engineer
		NetApp	Senior Consulting Engineer
Datacenter	Networking & Enterprise Networking	Infrastructure & Networking	Associate Consulting Engineer
			Consulting Engineer
			Senior Consulting Engineer
			Principal Consulting Engineer
Mobility	Client Management	Client Virtualization Endpoint Management Mobile Device Management	Associate Consulting Engineer
			Consulting Engineer
			Senior Consulting Engineer
			Principal Consulting Engineer
	VDI	Citrix	Technical Lead
Security	Network Security	Network Security	Senior Consulting Engineer
			Associate Consulting Engineer
			Consulting Engineer
			Principal Consulting Engineer
			Technical Lead

**EXHIBIT B
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Security	Information Security	Information Security	Penetration Testing
			Gap Analysis (HIPAA gap, PCI Gap, NIST)
Collaboration	Communication	Voice, Video Collaboration	Associate Consulting Engineer
			Consulting Engineer
			Senior Consulting Engineer
			Principal Consulting Engineer
			Technical Lead
Collaboration	Engagement	Contact Center	Associate Consulting Engineer
			Consulting Engineer
			Senior Consulting Engineer
			Principal Consulting Engineer
			Technical Lead
Collaboration	Productivity	Information Worker	Associate Consulting Engineer
			Consulting Engineer
			Senior Consulting Engineer
			Principal Consulting Engineer
			Technical Lead
Consulting Advisory Services	Consulting Advisory Services	Consulting Advisory Services	CAS_Business_Analyst
			CAS_Consulting_Services_Architect
			CAS_Engagement_Manager
			CAS_Technology_Architect
			CAS_Business_Architect
Project & Program Management	Project & Program Management	Project & Program Management	Project Admin
			Project Manager
			Senior Project Manager
			Program Manager

CDW•G Configuration Services

Service Group	EDC	Description	Advertised Price	Contract Discount	Contract Ceiling Price
Hardware Configurations and Priority Service					
Priority	1625768	PRIORITY SERVICE	\$ 21.99	5%	\$ 20.89
Hardware	1706188	CDW Hardware Install for Server	\$ 32.99	5%	\$ 31.34
Hardware	1706189	CDW Hardware Install for DT-LT	\$ 17.99	5%	\$ 17.09
Hardware	1820627	CDW Hardware Install for Netcom	\$ 22.99	5%	\$ 21.84
Hardware	3558560	CDW MOBILE DEVICE SIM CARD INSTALL	\$ 9.99	5%	\$ 9.49
Hardware	2437037	CDW RACK CONFIG 1 CREDIT	\$ 82.99	5%	\$ 78.84
Hardware	3803338	CDW HARDWARE INSTALL FOR PRINTER	\$ 32.99	5%	\$ 31.34
Asset Tagging					
Asset Tags	322170	CDW ASSET TAGS NO INSTALL MAIL ONLY	\$ 0.98	5%	\$ 0.93
Asset Tags	338519	CDW ASSET TAG W/O INSTALL	\$ 9.99	5%	\$ 9.49
Asset Tags	338521	CUSTOMER ASSET TAG CONFIG SERVICE	\$ 9.99	5%	\$ 9.49
Asset Tags	500814	CDW CREATE CUSTOM TAG/LABEL	\$ 29.99	5%	\$ 28.49
Asset Tags	500815	BASIC CUSTOM TAG	\$ 9.99	5%	\$ 9.49
Asset Tags	500817	INTERMEDIATE CUSTOM TAG	\$ 17.99	5%	\$ 17.09

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Asset Tags	500818	ADVANCED CUSTOM TAG	\$ 22.99	5%	\$	21.84
Asset Tags	537315	CDW CREATED CUSTOM TAG – MAIL ONLY	\$ 1.22	5%	\$	1.16
Asset Tags	955862	CDWG UID TAG/LABEL	\$ 9.99	5%	\$	9.49
Asset Tags	1095109	CDW RFID TAG	\$ 61.99	5%	\$	58.89
Asset Tags	3465262	BASIC CUSTOM TAG W/BOX DUP TAG	\$ 10.99	5%	\$	10.44
Asset Tags	3465269	CUSTOMER ASSET TAG W/BOX DUP REQ6330	\$ 10.99	5%	\$	10.44
Asset Tags	4347185	CUSTOMER ASSET TAG W BOX DUP REQ6247	\$ 12.99	5%	\$	12.34
Asset Tags	3465895	INTERMEDIATE CUSTM TAG W-BOX DUP TAG	\$ 21.99	5%	\$	20.89
Asset Tags	3982815	ADV CUSTOM TAG W/BOX DUP	\$ 24.99	5%	\$	23.74
Configuration Service Bundles						
Bundle	2342089	CDW HW IMAGE CDW ASSET TAG-REQ1173	\$ 45.99	5%	\$	43.69
Bundle	2342092	CDW HW IMAGE BASIC CUSTM TAG-REQ1174	\$ 52.99	5%	\$	50.34
Bundle	2342096	CDW HW IMAG CUSTMR ASSET TAG-REQ1175	\$ 52.99	5%	\$	50.34
Bundle	2342098	CDW IMAG CSTMR ASSET TAG PRI-REQ1176	\$ 46.99	5%	\$	44.64
Bundle	2342102	CDW IMAGE CDW ASSET TAG PRI-REQ1177	\$ 39.99	5%	\$	37.99
Bundle	2342106	CDW HW IMAGE PRIORITY-REQ1178	\$ 53.99	5%	\$	51.29
Bundle	2423730	CDW HW IMAGE CDW ASSET PRI-REQ1193	\$ 53.99	5%	\$	51.29
Bundle	2423732	CDW HW IMG BSC CUSTM TAG PRI-REQ1194	\$ 59.99	5%	\$	56.99
Bundle	2423734	CDW HW IMAG CUSTMR ASSET PRI-REQ1195	\$ 59.99	5%	\$	56.99
Bundle	2426793	CDW IMAGE CUSTMER ASSET TAG-REQ1197	\$ 39.99	5%	\$	37.99
Bundle	2426795	CDW IMAGE CDW ASSET TAG-REQ1198	\$ 32.99	5%	\$	31.34
Bundle	2426798	CDW HARDWARE IMAGE DEPLOY-REQ1199	\$ 45.99	5%	\$	43.69
Bundle	2853723	CDW IMAGE BASIC CUSTOM TAG-REQ1324	\$ 39.99	5%	\$	37.99
Bundle	2853726	CDW IMAGE BIOS CUSTOMIZATION-REQ1325	\$ 39.99	5%	\$	37.99
Bundle	3269810	CDW HW IMG INTRM TAG CMPTRAC REQ1901	\$ 63.99	5%	\$	60.79
Bundle	3327808	CDW LIGHT TOUCH IMAGE DEPLOY W-VPN	\$ 42.99	5%	\$	40.84
Bundle	4008018	LEVEL 1 IOS\ETCH INSERT REQ 5075	\$ 39.99	5%	\$	37.99
Bundle	4008025	LEVEL 1 IOS\ETCH REQ 5076	\$ 33.99	5%	\$	32.29
Bundle	4041681	IOS LVL1 & SRVC CUST INSERT REQ5156	\$ 28.99	5%	\$	27.54
Bundle	4056755	INT CUST TAG&DUP + DATA CAP CONTRACT	\$ 21.99	5%	\$	20.89
Bundle	4086733	CDW LT IMAGE DEPLOY W/VPN&BOX LABEL	\$ 44.99	5%	\$	42.74
Bundle	4171085	COI SPECOPS & PROJECTMANGEMENT R5611	\$ 569.99	5%	\$	541.49
Diagnostics						
Diagnostics	214266	CDW BURN IN 12 HOURS	\$ 21.99	5%	\$	20.89
Imaging						
Imaging	195856	CDW INSTALLING CUSTOM SERVER IMAGE	\$ 113.99	5%	\$	108.29
Imaging	247489	HILL ROM CREATE CUSTOM RESTORE CD	\$ 49.99	5%	\$	47.49
Imaging	266912	CDW APPLE IMAGE DEPLOYMENT	\$ 32.99	5%	\$	31.34
Imaging	283926	CDW MASTER IMAGE CREATION CREDIT	\$ 183.99	5%	\$	174.79
Imaging	379370	CDW INSTALLING CUSTOM PDA IMAGE	\$ 17.99	5%	\$	17.09
Imaging	534223	CDW STANDARD IMAGE DEPLOYMENT DT/NB	\$ 32.99	5%	\$	31.34
Imaging	763587	FLASH DRIVE IMAGING	\$ 9.99	5%	\$	9.49
Imaging	763593	CDW USB RESTORE UPTO 16GB	\$ 39.99	5%	\$	37.99
Imaging	809048	CDW MAINTAIN CUSTOM PC IMAGE-CREDIT	\$ 31.99	5%	\$	30.39
Imaging	1640342	CDW INSTALLING ALTIRIS SERVER IMAGE	\$ 113.99	5%	\$	108.29
Imaging	1926223	CDW TERMINAL IMAGE DEPLOYMENT	\$ 32.99	5%	\$	31.34
Imaging	2691836	CDW ZERO TOUCH IMAGE DEPLOYMENT	\$ 32.99	5%	\$	31.34
Imaging	2798606	CDW IMAGE MODEL MIGRATION CREDIT	\$ 113.99	5%	\$	108.29

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Imaging	2869570	CDW USB RESTORE UPTO 32GB	\$ 52.99	5%	\$	50.34
Imaging	3652393	CDW CREATE CUSTOM RECOVERY PARTITION	\$ 353.99	5%	\$	336.29
Imaging	3765107	SERVER RACKING ADV IMAGING SVC	\$ 219.99	5%	\$	208.99
Imaging	3982809	CDW USB RESTORE SVC UPTO 64GB	\$ 63.99	5%	\$	60.79
Imaging	4008336	CHROME WHITE GLOVE SERVICE TIER1	\$ 22.93	5%	\$	21.78
Imaging	4008354	CHROME WHITE GLOVE SERVICE TIER2	\$ 24.93	5%	\$	23.68
Imaging	4419882	CHROME UNMANAGED KIOSK APP INSTALL	\$ 28.92	5%	\$	27.47
Imaging	4086723	CDW IMAGE DEPLOY W BOX LABEL REQ6281	\$ 33.99	5%	\$	32.29
Imaging	4086738	CDW SCCM SRV-ZERO TOUCH W/BOX LABEL	\$ 33.99	5%	\$	32.29
Laser Etching / Color Branding						
Laser Etching	1461344	CDW LASER ETCHING-TIER 1 STATIC SML	\$ 11.00	5%	\$	10.45
Laser Etching	2815190	CDW LASER ETCHING-TIER 2 STATIC LRG	\$ 15.00	5%	\$	14.25
Laser Etching	2815191	CDW LASER ETCHING-TIER 3 DYNAMIC	\$ 22.00	5%	\$	20.90
Color Branding	3223260	CDW COLOR BRANDING TEMPLATE	\$ -	5%	\$	-
Color Branding	4100630	CDW COLOR BRANDING TIER 1	\$ 15.00	5%	\$	14.25
Color Branding	3223250	CDW COLOR BRANDING TIER 2	\$ 22.00	5%	\$	20.90
Color Branding	3436605	CDW COLOR BRANDING TIER 3	\$ 30.00	5%	\$	28.50
Mobile Carts						
Mobile Carts	4466480	CDW CHROMEBOOK WIRE CART CONFIG	\$ 120.00	5%	\$	114.00
Netcom						
Netcom	311718	CDW NETWORK & SECURITY DEVICE CONFIG	\$ 40.00	5%	\$	38.00
Netcom	1550455	CDW NETWORK & SEC CHASSIS CONFIG BUN	\$ 100.00	5%	\$	95.00
Netcom	1550460	CDW NETWORK & SEC DEVICE CONFIG BUN	\$ 65.00	5%	\$	61.75
Netcom	2394839	CDW NETWORK & SEC CHASSIS CONFIG	\$ 70.00	5%	\$	66.50
Netcom	2432019	CDW VPN DOMAIN JOIN ONLY	\$ 8.00	5%	\$	7.60
Netcom	3628500	CDW VPN DOMAIN JOIN ONLY-PCA	\$ 8.00	5%	\$	7.60
Netcom	3651585	CDW AP/ENDPOINT PROVISIONING	\$ 30.00	5%	\$	28.50
Netcom	4121801	CDW AP/ENDPOINT FIRMWARE UPDATE	\$ 16.00	5%	\$	15.20
Netcom	4219966	CDW CLIENT VPN CONFIGURATION	\$ 12.00	5%	\$	11.40
Other						
Other	504311	CDW HP ILO ACTIVATION	\$ 12.00	5%	\$	11.40
Other	872360	CDW SYSTEM BIOS/FIRMWARE UPG	\$ 16.00	5%	\$	15.20
Other	1197175	CDW CUSTOM IP CONFIGURATION	\$ 12.00	5%	\$	11.40
Other	1197180	CDW BIOS CUSTOMIZATION	\$ 5.00	5%	\$	4.75
Other	1369901	CDW SRVC CUSTOM ADDED INSERTS	\$ 5.00	5%	\$	4.75
Other	1369904	CDW DDS / COMPUTRACE ACTIVATION	\$ 5.00	5%	\$	4.75
Other	1369905	CDW DATA CAPTURE & TRACKING SRVC	\$ 5.00	5%	\$	4.75
Other	1713539	CDW SPECIAL CONFIG REQ - 1 CREDIT	\$ 5.00	5%	\$	4.75
Other	1713542	CDW SPECIAL CONFIG REQ - 6 CREDITS	\$ 30.00	5%	\$	28.50
Other	1713544	CDW SPECIAL CONFIG REQ - 12 CREDITS	\$ 60.00	5%	\$	57.00
Other	2366694	CDW APPLE IOS CUSTOMIZATION LVL 1	\$ 15.00	5%	\$	14.25
Other	2366709	CDW APPLE IOS CUSTOMIZATION LVL 2	\$ 30.00	5%	\$	28.50
Other	2613286	CDW ANDROID CUSTOMIZATION LVL 1	\$15.00	5%	\$	14.25
Other	2613287	CDW ANDROID CUSTOMIZATION LVL 2	\$ 30.00	5%	\$	28.50
Other	2671476	CDW SCREEN OVERLAY INSTALL SERVICE	\$ 8.00	5%	\$	7.60
Other	2696504	CDW Hard Drive Data Encryption DT/NB	\$ 12.00	5%	\$	11.40
Other	2828923	CDW SAS RAID Activation	\$ 12.00	5%	\$	11.40
Other	2858009	CDW KINDLE AD REMOVAL REQ1329	\$ 30.00	5%	\$	28.50

**EXHIBIT B
PRICING**

Other	3553290	CDW APPLE ID CREATION	\$ 5.00	5%	\$ 4.75
Other	3899153	CDW VPRO BASIC ACTIVATION REQ4717	\$ 5.00	5%	\$ 4.75
Other	4248044	CDW LENOVO IMM ACTIVATION	\$ 12.00	5%	\$ 11.40
Other	4176320	CDW ASSET MGMT UPDATE SVC REQ 5634	\$ 1.25	5%	\$ 1.19
Software					
Software	76056	CDW APPLICATION INSTALL DT/NB	\$ 36.00	5%	\$ 34.20
Software	76980	CDW NETWORK OPERATING SYSTEM INSTALL	\$ 200.00	5%	\$ 190.00
Software	346243	CDW STD WINDOWS CLIENT OS INSTALL	\$ 90.00	5%	\$ 85.50
Software	931000	CDW NETWORK APPLICATION INSTALL	\$ 100.00	5%	\$ 95.00
Software	1197183	CDW APPLICATION UPDATES AND MAINTENANCE	\$ 22.00	5%	\$ 20.90
Software	1278296	CDW OEM MFG OS INSTALLATION	\$ 90.00	5%	\$ 85.50
Software	1291101	CDW LINUX INSTALLATION OS-ALL VERS	\$ 120.00	5%	\$ 114.00
Software	1550439	SUN SOLARIS INSTALLATION – ALL VERSIONS	\$ 200.00	5%	\$ 190.00
Software	1550447	VMWARE INSTALLATION – ALL VERSIONS	\$ 70.00	5%	\$ 66.50
Software	3803347	CDW SOFTWARE CONFIG FOR PRINTER	\$ 24.00	5%	\$ 22.80
Software	3982800	CDW HDD OS SWAP SVC REQ5012	\$ 36.00	5%	\$ 34.20
Configuration Project Management / COI					
Proj. Mgmt	3110955	CDW CONFIG PROJECT COORD HRLY CREDIT	\$ 75.00	5%	\$ 71.25
Proj. Mgmt	4289890	CDW CONFIG PM 150 HRLY CHARGE	\$ 150.00	5%	\$ 142.50
Proj. Mgmt	3536706	CDW COI PROJ COORD /OPS COST	\$ 5,000.00	5%	\$ 4,750.00
Proj. Mgmt	3543509	CDW CONFIG PROJECT COORD CREDIT/UNIT	\$ 5.00	5%	\$ 4.75
Proj. Mgmt	3752290	CDW PROJ MNGMNT CONFIG AP SVC	\$ 7.00	5%	\$ 6.65
Proj. Mgmt	4086747	CONFIGS SERVICES PROJ MGMT(PER UNIT)	\$ 1.00	5%	\$ 0.95
Proj. Mgmt	4087191	CONFIGS SERVICES PROJ MGMT(PER UNIT)	\$ 0.50	5%	\$ 0.48
COI	3268855	CDW CONFIG PROJECT COORD COI SVC	\$ 300.00	5%	\$ 285.00
COI	3561536	COI OPS PALLET RECEIVING/PROCESSING	\$ 480.00	5%	\$ 456.00
COI	4439488	COI OPS PALLET/MONTH.REC/PRO	\$ 40.00	5%	\$ 38.00
COI	3659769	CDW COI OPERATIONAL EXPENSE WITH SN	\$ 10.00	5%	\$ 9.50
COI	3827583	COI TEMP TAG NO INSTALL E-MAIL	\$ 10.00	5%	\$ 9.50

EXHIBIT C
MESA STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.
2. **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
3. **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
4. **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
5. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.
6. **NON-EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
7. **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
8. **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
9. **COMPLIANCE WITH APPLICABLE LAWS.**
 - a. **General.** Contractor must procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace.

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Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel, and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- i. As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
 - ii. A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - iii. The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - iv. The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - v. Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.
10. **SALES/USE TAX, OTHER TAXES.**
- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

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- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
11. **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of Services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.
12. **PUBLIC RECORDS.** Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.
- a. If Contractor believes document related to the Agreement contains trade secrets or other proprietary data, Contractor must notify the City and include with the notification a statement that explains and supports Contractor's claim. Contractor also must specifically identify the trade secrets or other proprietary data that Contractor believes should remain confidential.
- b. In the event the City determines it is legally required to disclose pursuant to law any documents or information Contractor deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide Contractor with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so Contractor may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for Contractor to seek court ordered protection or other legal remedies as deemed appropriate by Contractor. If Contractor does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to Contractor.
13. **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City. Notwithstanding the foregoing, any Agreement audits must be pursuant to a signed Confidentiality Agreement agreed to by both parties which will be subject to applicable law, including the Arizona Public Records law. Contractor is not required to keep original documents and copies of relevant documents will suffice for the purposes of this provision. The audit must be conducted during regular business hours at a mutually agreeable time and location, and upon reasonable advanced notice of records to be audited.
14. **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
15. **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.
16. **DEFAULT.**
- a. A party will be in default if that party:

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- i. Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - ii. Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - iii. Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - iv. Fails to carry out any term, promise, or condition of the Agreement.
 - b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
 - c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.
 - d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
17. **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
 - a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
 - b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.
 - c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
 - d. Neither party will be liable for incidental, special, or consequential damages.
18. **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
19. **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.
20. **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or

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further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.

21. **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
22. **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.
23. **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
24. **INDEMNIFICATION/LIABILITY.**
 - a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) misconduct by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with this Agreement. However, notwithstanding the prior sentence, any claim shall not be an indemnified claim if such claim or damage was caused in whole by the actions of the City, its employees, agents, contractors or representatives.
 - b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
 - c. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or Services.
 - d. IN THE EVENT OF ANY LIABILITY INCURRED BY CONTRACTOR OR ANY OF ITS AFFILIATES HEREUNDER, INCLUDING INDEMNIFICATION OF CITY BY CONTRACTOR, THE ENTIRE LIABILITY OF CONTRACTOR AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED \$5,000,000.00 OVER THE ENTIRE TERM OF THE AGREEMENT.
25. **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of Exhibit A. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner, as stated below.
 - a. **Manufacturer's Warranty.** The City understands that the Contractor is not the manufacturer of the products purchased by the City hereunder and the only materials (product) warranties offered are those of the manufacturer, not the Contractor or its affiliates unless the manufacturer is the Contractor or its affiliates. THE CONTRACTOR AND ITS AFFILIATES HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED,

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RELATED TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY.

- b. **Services Warranty.** City's sole and exclusive remedy with respect to a warranty on the Services provided by Contractor will be, at the sole option of Contractor, to either: (a) use its reasonable commercial efforts to reperform any services not in substantial compliance with this warranty, or (b) refund amounts paid by City related to the portion of the services not in substantial compliance; provided, in each case, City notifies Contractor in writing within five (5) business days after performance of the applicable Services. City shall be solely responsible for daily back-up and other protection of its data and software against loss, damage or corruption during the performance of services and for any necessary reconstruction thereof.
 - c. **Third Party Services Warranty.** In connection with the products (materials), certain services, such as extended warranty service by manufacturers, are sold by the Contractor as a distributor or sales agent ("Third Party Services"). In the case of Third Party Services, the third party will be the party responsible for providing the services to the City and the City will look to the third party for any loss, claims or damages arising from or related to the provision of such Third-Party Services. Any amounts, including, but not limited to, taxes, associated with Third Party Services which may be collected by the Contractor will be collected solely in the capacity as an independent sales agent.
26. **THE CITY'S RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.
27. **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
28. **OWNERSHIP.**
- a. Except as it pertains to the Work Product in Subsection (b) below, all deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.
 - b. City's rights to Work Product (meaning deliverables to be provided or created individually or jointly in connection with the services, not materials, provided by Contractor, including but not limited to, all inventions, discoveries, methods, processes, formulae, ideas, concepts, techniques, know-how, data, designs, models, prototypes, works of authorship, computer programs, proprietary tools, methods of analysis and other information, whether or not capable of protection by patent, copyright, trade secret, confidentiality, or other proprietary rights, or discovered in the course of performance of this Agreement that are embodied in such work or materials) will be, upon payment in full, a non-transferable, non-exclusive, royalty-free license to use such Work Product solely for City's internal use. City obtains no ownership or other property rights thereto. City agrees that Contractor may incorporate intellectual property created by third parties into the Work Product and that City's right to use such Work Product may be subject to the rights of, and limited by agreements with, such third parties

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29. **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
30. **PROHIBITED ACTS.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.
31. **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
32. **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of Contractor's goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
33. **SAFEGUARDING CITY PROPERTY.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.
34. **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
35. **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right (collectively "Claim") and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any Claim, or pay any settlement of such Claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its sole option and its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years based on a five (5) year straight line amortized basis. The foregoing provisions in this Section state the entire liability of Contractor and the sole and exclusive remedy of the City with respect to any Claim. Contractor shall have no liability or obligation to the City to the extent any Claim is based upon: (i) any combination of anything provided by Contractor with other software, hardware or other materials not authorized by Contractor or manufacturer; or (ii) any addition to, or modification of, anything provided by Contractor made after delivery to the City by any person other than Contractor.
36. **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).
37. **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose

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performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

38. **COOPERATIVE USE OF CONTRACT.** This contract is available through National IPA to agencies nationwide. The City has also entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies through National IPA or SAVE in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

Additionally, Contractor will comply with the governing body's fingerprinting policy of each individual school district and public entity. Contractor, subcontractors, vendors and their employees will not provide services on school district properties until authorized by the school district.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others. The City is not a party to any agreements between the Contractor and National IPA, National IPA and other agencies, the Contractor and other agencies, or any third-party contracts in any way related to this Agreement or the cooperative use of this Agreement.

39. **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.
40. **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via email or facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier, email or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.
41. **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Maricopa County, Arizona.
42. **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.

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43. **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.
44. **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
45. **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
46. **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to Arizona Revised Statutes Sections 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As the Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes as applicable.



Contract Title: INFORMATION TECHNOLOGY SOLUTIONS & SERVICES

Contract Number: 2018011

Amendment Number: 1

Description of Change: Amendment to incorporate the below "Federal Certifications" document with the Contract.

Effective Date of Change: 8/7/2018

Acceptance: On behalf of the undersigned Contractor, I have given careful consideration to this Contract Amendment and hereby agree to the change(s) and except that as amended herein, all provisions of the Contract remain in full force and effect.

CDW GOVERNMENT, LLC.:

City of Mesa:

Signature

Christina V. Rother

Printed Name

9-4-18

Date

Signature

City Manager Designee

Date

Reviewed by:

Signature

Matt Bauer

Printed Name

9/12/2018

Date

FEDERAL CERTIFICATIONS
ADDENDUM FOR AGREEMENT FUNDED BY U.S. FEDERAL GRANT

TO WHOM IT MAY CONCERN:

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. This form should be completed and returned.

The following certifications and provisions may be required and apply when a Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

APPENDIX II TO 2 CFR PART 200

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when a Participating Agency expends federal funds, the Participating Agency reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does offeror agree? YES CVR Initials of Authorized Representative of offeror

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (B) above, when a Participating Agency expends federal funds, the Participating Agency reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Offeror in the event Offeror fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Participating Agency also reserves the right to terminate the contract immediately, with written notice to offeror, for convenience, if Participating Agency believes, in its sole discretion that it is in the best interest of Participating Agency to do so. Offeror will be compensated for work performed and accepted and goods accepted by Participating Agency as of the termination date if the contract is terminated for convenience of Participating Agency. Any award under this procurement process is not exclusive and Participating Agency reserves the right to purchase goods and services from other offerors when it is in Participating Agency's best interest.

Does offeror agree? YES CVR Initials of Authorized Representative of offeror

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does offeror agree to abide by the above? YES CVR Initials of Authorized Representative of offeror

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted

Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as

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supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when a Participating Agency expends federal funds during the term of an award for all contracts and subgrants for construction or repair, offeror will be in compliance with all applicable Davis-Bacon Act provisions.

Does offeror agree? YES CNR Initials of Authorized Representative of offeror

(E) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when a Participating Agency expends federal funds, offeror certifies that offeror will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by Participating Agency resulting from this procurement process.

Does offeror agree? YES CNR Initials of Authorized Representative of offeror

(F) **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does offeror agree? YES CNR Initials of Authorized Representative of offeror

(G) **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387),** as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)

Pursuant to Federal Rule (G) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency member resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does offeror agree? YES CNR Initials of Authorized Representative of offeror

(H) **Debarment and Suspension (Executive Orders 12549 and 12689)**—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

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Does offeror agree? YES CNR Initials of Authorized Representative of offeror

(l) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (l) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term and after the awarded term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does offeror agree? YES CNR Initials of Authorized Representative of offeror

RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by Participating Agency for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does offeror agree? YES CNR Initials of Authorized Representative of offeror

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When Participating Agency expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

Does offeror agree? YES CNR Initials of Authorized Representative of offeror

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

To the extent purchases are made with Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration funds, offeror certifies that its products comply with all applicable provisions of the Buy America Act and agrees to provide such certification or applicable waiver with respect to specific products to any Participating Agency upon request. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does offeror agree? YES CNR Initials of Authorized Representative of offeror

CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336

Offeror agrees that the Inspector General of the Agency or any of their duly authorized representatives shall have access to any books, documents, papers and records of offeror that are directly pertinent to offeror's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to offeror's personnel for the purpose of interview

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and discussion relating to such documents.

Does offeror agree? YES CR Initials of Authorized Representative of offeror

CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS

Offeror agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

Does offeror agree? YES CR Initials of Authorized Representative of offeror

Offeror agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that offeror certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.


Offeror's Name: CDW Government, LLC

Address, City, State, and Zip Code: 230 N. Milwaukee Ave, Vernon Hills, IL 60061-9740

Phone Number: 866.339.9816 Fax Number: _____

Printed Name and Title of Authorized Representative: Christina V. Rother

Email Address: psp@cdwg.com

Signature of Authorized Representative:  Date: 9-4-18

**Exhibit C
Pricing**

Item #	Product	Product / Group	Discount	Manufacturer Name
1)	Group 1 --Systems	1) Desktops	2.10%	All
		2) Notebooks	2.10%	All
		3) Tablets	2.25%	All
		4) Servers (1 Processor, 2 Processor, 4+ Processor, Blade, Tower, Unix, Handhelds, etc.)	4.00%	All
2)	Group 2 - Input Devices	5) Keyboards	6.75%	All
		6) Mice	6.75%	All
		7) Imaging Scanners	3.00%	All
		8) POS Scanners	3.00%	All
		9) Pointing Devices	3.50%	All
		10) Bar Code Readers	4.25%	All
		11) Audio Input	15.00%	All
		12) Input Adapters	5.00%	All
		13) PC and Network Cameras	5.50%	All
		14) Input Cables	15.00%	All
		15) Input Accessories	6.75%	All
3)	Group 3 - Output Devices	16) Displays	3.50%	All
		17) Printers	3.00%	All
		18) Inkjet Printers	3.00%	All
		19) Inkjet Photo Printers	3.00%	All
		20) Laser Printers	3.00%	All
		21) Label Printers	4.25%	All
		22) Dot Matrix Printers	3.00%	All
		23) Multi-Function Printers	3.00%	All
		24) Wide Format Printers	3.00%	All
		25) Multi-Function Inkjet Printers	3.00%	All
		26) Wide Format Printers	3.00%	All
		27) Fax Machine Printers	3.00%	All
		28) Printer Accessories	3.00%	All
		29) Projectors	3.50%	All
		30) Projector Accessories	3.50%	All
31) Audio Input	15.00%	All		
32) Video Cards	3.50%	All		

		33) Sound Cards	3.50%	All
		34) Output Accessories	6.75%	All
		35) Printer Consumables	3.00%	All
4)	Group 4 - Memory	36) Desktop	13.00%	All
		37) Flash	5.50%	All
		38) Networking	13.00%	All
		39) Notebook	13.00%	All
		40) Printer / Fax	13.00%	All
		41) Server	13.00%	All
5)	Group 5 - Storage Devices	42) Adapters Fiber Channel	5.50%	All
		43) Adapters FireWire / USB	5.50%	All
		44) Adapters IDE/ATA/SATA	5.50%	All
		45) Adapters RAID	5.50%	All
		46) Adapters SCSI	5.50%	All
		47) Bridges & Routers	5.50%	All
		48) Disk Arrays	5.50%	All
		49) Disk Arrays JBOD	5.50%	All
		50) Drives Magneto-Optical	5.50%	All
		51) Drives Removable Disks	5.50%	All
		52) Fiber Channel Switches	5.50%	All
		53) Hard Disks - External	5.50%	All
		54) Hard Disks - Fiber Channel	5.50%	All
		55) Hard Disks - IDE/ATA/S	5.50%	All
		56) Hard Disks - Notebook	5.50%	All
		57) Hard Disks - SCSI	5.50%	All
		58) Networking Accessories	5.50%	All
		59) Optical Drives - CD-ROM	5.50%	All
		60) Optical Drives - CD-RW	5.50%	All
		61) Optical Drives - DVD-CD	5.50%	All
		62) Optical Drives - DVD-RW	5.50%	All
		63) Storage Accessories	5.00%	All
		64) Storage - NAS	5.00%	All
		65) Storage - SAN	5.00%	All
		66) Tape Autoloaders - AIT	5.00%	All
		67) Tape Autoloaders - DAT	5.00%	All
		68) Tape Autoloaders - DLT	5.00%	All
		69) Tape Autoloaders - LTO	5.00%	All
		70) Tape Drives - 4mm	5.00%	All

		71) Tape Drives - 8mm/VXA	5.00%	All
		72) Tape Drives - AIT	5.00%	All
		73) Tape Drives - DAT	5.00%	All
		74) Tape Drives - DLT	5.00%	All
		75) Tape Drives - LTO/Ultrium	5.00%	All
		76) Tape Drives SDLT	5.00%	All
		77) Tape Drives - Travan	5.00%	All
6)	Group 6 - Network Equipment	78) 10/100 Hubs & Switches	5.50%	All
		79) Bridges & Routers	5.50%	All
		80) Gigabit Hubs & Switches	5.50%	All
		81) Concentrators & Multiplexers	5.50%	All
		82) Hardware Firewalls	5.50%	All
		83) Intrusion Detection	5.50%	All
		84) KVM	4.00%	All
		85) Modems	5.50%	All
		86) Network Test Equipment	5.50%	All
		87) Network Adapters	5.50%	All
		88) Network Cables	15.00%	All
		89) Network Accessories	5.50%	All
		90) Repeaters & Transceivers	5.50%	All
		91) Wireless LAN Accessories	5.50%	All
7)	Group 7 - Software	92) Token Authentication	5.50%	All
		93) 10G Fiber Optic Transceivers	5.50%	All
		94) 1G Fiber Optic Transceivers	5.50%	All
		95) Licensing Packages (e.g. Microsoft)	4.00%	All
		96) Licensing Backup	4.00%	All
		97) Licensing Barcode/OC	4.00%	All
		98) Licensing Business Application	4.00%	All
		99) Licensing CAD/CAM	4.00%	All
		100) Licensing - Cloning	4.00%	All
		101) Licensing - Computer Services	4.00%	All
		102) Licensee - Database	4.00%	All
		103) Licensing - Development	4.00%	All
104) Licensing - Entertainment	4.00%	All		
105) Licensing - Financial	4.00%	All		
106) Licensing - Flow Chart	4.00%	All		
107) Licensing - Graphic Design	4.00%	All		
108) Licensing - Handheld	4.00%	All		

		109) Licensing - Network OS	4.00%	All
		110) Licensing - OS	4.00%	All
		111) Licensing - Personal Organization	4.00%	All
		112) Licensing - Presentation	4.00%	All
		113) Licensing - Reference	4.00%	All
		114) Licensing - Report Analysis	4.00%	All
		115) Licensing - Spreadsheet	4.00%	All
		116) Licensing - Utilities	4.00%	All
		117) Licensing - Warranties	4.00%	All
		118) Licensing - Web Development	4.00%	All
		119) Licensing - Word Processing	4.00%	All
		120) Software - Backup	4.00%	All
		121) Software - Barcode / OCR	4.00%	All
		122) Software - Business Application	4.00%	All
		123) Software - CAD/CAM	4.00%	All
		124) Software - Cloning	4.00%	All
		125) Software - Computer Services	4.00%	All
		126) Software - Database	4.00%	All
		127) Software - Development	4.00%	All
		128) Software - Entertainment	4.00%	All
		129) Software - Financial	4.00%	All
		130) Software - Flow Chart	4.00%	All
		131) Software - Graphic Design	4.00%	All
		132) Software - Handheld	4.00%	All
		133) Software - OS	4.00%	All
		134) Software - Personal Organization	4.00%	All
		135) Software - Presentation	4.00%	All
		136) Software - Reference	4.00%	All
		137) Software - Report Analysis	4.00%	All
		138) Software - Spreadsheet	4.00%	All
		139) Software - Utilities	4.00%	All
		140) Software - Warranties	4.00%	All
		141) Software - Web Development	4.00%	All
		142) Software - Word Processing	4.00%	All
8)	Group 8 - Media Supplies	143) Media - 4mm tape	5.50%	All
		144) Media - AIT tape	5.50%	All
		145) Media - DAT tape	5.50%	All
		146) Media - DLT tape	5.50%	All

		147) Media LTO / Ultrium tape drive	5.50%	All
		148) Media - Magneto - Optical	5.50%	All
		149) Media - Optical	5.50%	All
		150) Media - SLR tape	5.50%	All
		151) Media - Travan tape	5.50%	All
		152) Media - VXA tape	5.50%	All
		153) Media - zip	5.50%	All
9)	Group 9 - Collaboration & IP Telephony	154) IP phones	4.25%	All
		155) Video conferencing products	4.25%	All
		156) Voice gateways / servers	4.25%	All
		157) Headsets	4.25%	All
		158) Audio conferencing products	4.25%	All
		159) Analog phones	4.25%	All
		160) Accessories	4.25%	All
10)	Group 10 - Other	161) Advanced Integration	3.00%	All
		162) Asset Disposal	3.00%	All
		163) Asset Management	3.00%	All
		164) Cables	15.00%	All
		165) Cables - custom	15.00%	All
		166) Cables - printer	15.00%	All
		167) Complex warranties	3.00%	All
		168) Desktop Accessories	6.75%	All
		169) Display Accessories	3.50%	All
		170) Electronic Services	3.00%	All
		171) Handheld Accessories	6.75%	All
		172) Imaging Accessories	6.75%	All
		173) Imaging - Camcorders	3.50%	All
		174) Imaging - Digital Cameras	3.50%	All
		175) Internal Lab Service	3.00%	All
		176) Lab fees	3.00%	All
		177) Managed Services	3.00%	All
		178) Miscellaneous solutions	3.00%	All
		179) Mounting hardware for vehicles	2.50%	All
		180) Networking Warranties	3.50%	All
		181) Notebook Accessories	2.50%	All
		182) Notebook Batteries	5.00%	All
		183) PC Lab order services	3.00%	All
		184) POS Accessories	4.25%	All

	223) Multifunction Security Appliances	5.50%	All
	224) Network Camera Accessories	5.50%	All
	225) Network Cameras	5.50%	All
	226) Physical/Environmental Security	5.50%	All
	227) Security Appliance Accessories	5.50%	All
	228) Security Tokens	5.50%	All
	229) Unified Threat Management	5.50%	All
	230) 2-way Radios / Walkie Talkies	6.75%	All
	231) Apple Notebooks	2.50%	All
	232) Convertible PCs / Slate PCs / iPad	2.25%	All
	233) iPad	2.25%	All
	234) Slate Tablet Computers	2.25%	All
	235) GPS / PDA	6.75%	All
	236) Wireless Communication Devices	2.50%	All
	237) Batteries	5.00%	All
	238) Power Supplies / Adapters	5.00%	All
	239) Rackmount Equipment	5.00%	All
	240) Remote Power Management	5.00%	All
	241) Surge Suppressors	5.00%	All
	242) UPS / Battery Backup	5.00%	All
	243) 14" & smaller LCD Display	3.50%	All
	244) 15-19" LCD Display	3.50%	All
	245) 15-19" Wide LCD Display	3.50%	All
	246) 15-19" Wide LED Display	3.50%	All
	247) 20-30" LCD Display	3.50%	All
	248) 20-30" Wide LCD Display	3.50%	All
	249) 20-30" Wide LED Display	3.50%	All
	250) PCoIP and Zero Client Displays	3.50%	All
	251) Arm Mounts	3.50%	All
	252) Ceiling Mounts	3.50%	All
	253) Combo Mounts	3.50%	All
	254) Desktop Stands / Risers	3.50%	All
	255) Flat Wall Mounts	3.50%	All
	256) Mount Accessories	3.50%	All
	257) Pole Display	4.25%	All
	258) Stands / Carts / Feet	3.50%	All
	259) Tilt Wall Mounts	3.50%	All

		260) C-Cure Products	4.00%	All
		261) Istar Products	5.50%	All
11)	Group 11 - Services	SERVICE	STANDARD HOURLY RATE	DISCOUNT FROM STANDARD RATE
		Design and Analysis	Please see CDW•G's Professional Services Offering below for descriptions of CDW•G's Professional Services.	
		Configuration		%
		Implementation		%
		Installation		%
		Training		%
		Maintenance & Support		%
CDW Configuration Services	5%			
12)	Group 12 - Additional Products/Services Not Identified	Please see CDW•G's Configuration Services Pricelist below for descriptions and pricing of CDW•G's Configuration Services.		
		Apple Products for eligible Government and Educational Entities		0.50%

CDW•G has conformed to the National Pricing structure aligning to National IPA's product taxonomy, however, **CDW•G will manage the resultant contract according to CDW•G's Product Tree below, which shall govern all purchases and provides more breadth and a more complete representation of the CDW•G Catalog. All discounts will be applied by product category listed below to CDW•G's Nationally Advertised Pricing which is publicly verifiable at www.cdwg.com.**

CDW•G Product Tree Categories	Discount
Accessories	6.75%
Power, Cooling & Racks	5.00%
Desktop Computers	3.00%
PC Compatible Desktop Computer	2.10%
PC Compatible Workstation	3.00%
Blade PCs	3.00%
RISC Processor Workstation	3.00%
Thin Clients	3.00%
Web TV Access Unit	3.00%

Windows Based Terminals	3.00%
Data Storage / Drives	5.50%
Enterprise Storage	5.00%
Point of Sale/Data Capture	4.25%
Servers & Server Management	4.00%
Services (CDW Delivered)	0.00%
Notebook/Mobile Devices	2.50%
Notebook Computers	2.10%
Notebook Accessories	2.50%
Wireless Communication Devices	2.50%
Convertible PCs/Slate PCs/iPAD	2.25%
Chromebooks	0.00%
Netcomm Products	5.50%
Gigabit Switch	6.00%
Modular Switch Chassis	6.00%
Modular Switches	5.50%
Carts and Furniture	5.00%
Printing & Document Scanning	3.00%
Services (3rd Party Delivered)	0.00%
Warranties-Product Protection	3.50%
Software	4.00%
Collaboration Hardware	4.25%
Memory/System Components	13.00%
Video-Projection-Pro Audio	3.50%
Cables	15.00%
CDW Configuration Services	5.00%
Apple Products for Eligible Entities	.50%

CDW•G will work with Manufacturers and the City or Participating Agencies, as applicable, post award to ensure they are aware of and participating in special manufacturer programs.

CDW•G Account Managers will work with the City or Participating Agencies, as applicable, post award to determine if large orders qualify to receive additional discounts. These discounts are dependent on order size, delivery schedule and will be negotiated with Manufacturers.

As Apple's largest Corporate Channel Partner in the U.S., CDW•G has negotiated to offer Apple Products to Eligible Government and Educational Entities at the discount listed above and in the pricing table in this Exhibit B.

CDW•G Professional Services Offering

Major Metro Service Areas

Washington, DC New York City Metro Los Angeles San Francisco San Diego Boston Metro Chicago Federal Philadelphia Seattle	Raleigh Houston Tampa Atlanta National Dallas Cincinnati Detroit Minneapolis St. Louis/KC Denver Nashville Portland	Madison Wausau Milwaukee Appleton Grand Rapids Indianapolis Cleveland
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Services apply to both CDW•G executed professional services and services which are sub-contracted through a CDW•G authorized third party provider. Hourly or fixed rates will be negotiated based on the customer, geography, scope of the professional service engagement, and level of engineer required to perform the service. CDW•G will create a Statement of Work (SOW) detailing the exact scoping and pricing of the Services to be provided, which will be executed by CDW•G and the National IPA member prior to the start of Services. Sample SOW is included in our proposal. Expenses (T and E) may be an additional consideration depending on project specifics.

Solution Domain	Discipline	Technology Domain	Role
Datacenter	Storage	Data Migration	Senior Consulting Engineer
		EMC	Senior Consulting Engineer
		IBM	Senior Consulting Engineer
		VMWare	Senior Consulting Engineer
		NetApp	Senior Consulting Engineer
Datacenter	Networking & Enterprise Networking	Infrastructure & Networking	Associate Consulting Engineer
			Consulting Engineer
			Senior Consulting Engineer
			Principal Consulting Engineer
Mobility	Client Management	Client Virtualization Endpoint Management Mobile Device Management	Associate Consulting Engineer
			Consulting Engineer
			Senior Consulting Engineer
			Principal Consulting Engineer
	VDI	Citrix	Technical Lead
Security	Network Security	Network Security	Senior Consulting Engineer
			Associate Consulting Engineer
			Consulting Engineer
			Principal Consulting Engineer
			Technical Lead

Security	Information Security	Information Security	Penetration Testing
			Gap Analysis (HIPAA gap, PCI Gap, NIST)
Collaboration	Communication	Voice, Video Collaboration	Associate Consulting Engineer
			Consulting Engineer
			Senior Consulting Engineer
			Principal Consulting Engineer
			Technical Lead
Collaboration	Engagement	Contact Center	Associate Consulting Engineer
			Consulting Engineer
			Senior Consulting Engineer
			Principal Consulting Engineer
			Technical Lead
Collaboration	Productivity	Information Worker	Associate Consulting Engineer
			Consulting Engineer
			Senior Consulting Engineer
			Principal Consulting Engineer
			Technical Lead
Consulting Advisory Services	Consulting Advisory Services	Consulting Advisory Services	CAS_Business_Analyst
			CAS_Consulting_Services_Architect
			CAS_Engagement_Manager
			CAS_Technology_Architect
			CAS_Business_Architect
Project & Program Management	Project & Program Management	Project & Program Management	Project Admin
			Project Manager
			Senior Project Manager
			Program Manager

CDW•G Configuration Services

Service Group	EDC	Description	Advertised Price	Contract Discount	Contract Ceiling Price
Hardware Configurations and Priority Service					
Priority	1625768	PRIORITY SERVICE	\$ 21.99	5%	\$ 20.89
Hardware	1706188	CDW Hardware Install for Server	\$ 32.99	5%	\$ 31.34
Hardware	1706189	CDW Hardware Install for DT-LT	\$ 17.99	5%	\$ 17.09
Hardware	1820627	CDW Hardware Install for Netcom	\$ 22.99	5%	\$ 21.84
Hardware	3558560	CDW MOBILE DEVICE SIM CARD INSTALL	\$ 9.99	5%	\$ 9.49
Hardware	2437037	CDW RACK CONFIG 1 CREDIT	\$ 82.99	5%	\$ 78.84
Hardware	3803338	CDW HARDWARE INSTALL FOR PRINTER	\$ 32.99	5%	\$ 31.34
Asset Tagging					
Asset Tags	322170	CDW ASSET TAGS NO INSTALL MAIL ONLY	\$ 0.98	5%	\$ 0.93
Asset Tags	338519	CDW ASSET TAG W/O INSTALL	\$ 9.99	5%	\$ 9.49
Asset Tags	338521	CUSTOMER ASSET TAG CONFIG SERVICE	\$ 9.99	5%	\$ 9.49
Asset Tags	500814	CDW CREATE CUSTOM TAG/LABEL	\$ 29.99	5%	\$ 28.49
Asset Tags	500815	BASIC CUSTOM TAG	\$ 9.99	5%	\$ 9.49
Asset Tags	500817	INTERMEDIATE CUSTOM TAG	\$ 17.99	5%	\$ 17.09

Asset Tags	500818	ADVANCED CUSTOM TAG	\$ 22.99	5%	\$	21.84
Asset Tags	537315	CDW CREATED CUSTOM TAG – MAIL ONLY	\$ 1.22	5%	\$	1.16
Asset Tags	955862	CDWG UID TAG/LABEL	\$ 9.99	5%	\$	9.49
Asset Tags	1095109	CDW RFID TAG	\$ 61.99	5%	\$	58.89
Asset Tags	3465262	BASIC CUSTOM TAG W/BOX DUP TAG	\$ 10.99	5%	\$	10.44
Asset Tags	3465269	CUSTOMER ASSET TAG W/BOX DUP REQ6330	\$ 10.99	5%	\$	10.44
Asset Tags	4347185	CUSTOMER ASSET TAG W BOX DUP REQ6247	\$ 12.99	5%	\$	12.34
Asset Tags	3465895	INTERMEDIATE CUSTM TAG W-BOX DUP TAG	\$ 21.99	5%	\$	20.89
Asset Tags	3982815	ADV CUSTOM TAG W/BOX DUP	\$ 24.99	5%	\$	23.74
Configuration Service Bundles						
Bundle	2342089	CDW HW IMAGE CDW ASSET TAG-REQ1173	\$ 45.99	5%	\$	43.69
Bundle	2342092	CDW HW IMAGE BASIC CUSTM TAG-REQ1174	\$ 52.99	5%	\$	50.34
Bundle	2342096	CDW HW IMAG CUSTMR ASSET TAG-REQ1175	\$ 52.99	5%	\$	50.34
Bundle	2342098	CDW IMAG CSTMR ASSET TAG PRI-REQ1176	\$ 46.99	5%	\$	44.64
Bundle	2342102	CDW IMAGE CDW ASSET TAG PRI-REQ1177	\$ 39.99	5%	\$	37.99
Bundle	2342106	CDW HW IMAGE PRIORITY-REQ1178	\$ 53.99	5%	\$	51.29
Bundle	2423730	CDW HW IMAGE CDW ASSET PRI-REQ1193	\$ 53.99	5%	\$	51.29
Bundle	2423732	CDW HW IMG BSC CSTM TAG PRI-REQ1194	\$ 59.99	5%	\$	56.99
Bundle	2423734	CDW HW IMAG CUSTMR ASSET PRI-REQ1195	\$ 59.99	5%	\$	56.99
Bundle	2426793	CDW IMAGE CUSTMER ASSET TAG-REQ1197	\$ 39.99	5%	\$	37.99
Bundle	2426795	CDW IMAGE CDW ASSET TAG-REQ1198	\$ 32.99	5%	\$	31.34
Bundle	2426798	CDW HARDWARE IMAGE DEPLOY-REQ1199	\$ 45.99	5%	\$	43.69
Bundle	2853723	CDW IMAGE BASIC CUSTOM TAG-REQ1324	\$ 39.99	5%	\$	37.99
Bundle	2853726	CDW IMAGE BIOS CUSTOMIZATION-REQ1325	\$ 39.99	5%	\$	37.99
Bundle	3269810	CDW HW IMG INTRM TAG CMPTRAC REQ1901	\$ 63.99	5%	\$	60.79
Bundle	3327808	CDW LIGHT TOUCH IMAGE DEPLOY W-VPN	\$ 42.99	5%	\$	40.84
Bundle	4008018	LEVEL 1 IOS\ETCH INSERT REQ 5075	\$ 39.99	5%	\$	37.99
Bundle	4008025	LEVEL 1 IOS\ETCH REQ 5076	\$ 33.99	5%	\$	32.29
Bundle	4041681	IOS LVL1 & SRVC CUST INSERT REQ5156	\$ 28.99	5%	\$	27.54
Bundle	4056755	INT CUST TAG&DUP + DATA CAP CONTRACT	\$ 21.99	5%	\$	20.89
Bundle	4086733	CDW LT IMAGE DEPLOY W/VPN&BOX LABEL	\$ 44.99	5%	\$	42.74
Bundle	4171085	COI SPECOPS & PROJECTMANGEMENT R5611	\$ 569.99	5%	\$	541.49
Diagnostics						
Diagnostics	214266	CDW BURN IN 12 HOURS	\$ 21.99	5%	\$	20.89
Imaging						
Imaging	195856	CDW INSTALLING CUSTOM SERVER IMAGE	\$ 113.99	5%	\$	108.29
Imaging	247489	HILL ROM CREATE CUSTOM RESTORE CD	\$ 49.99	5%	\$	47.49
Imaging	266912	CDW APPLE IMAGE DEPLOYMENT	\$ 32.99	5%	\$	31.34
Imaging	283926	CDW MASTER IMAGE CREATION CREDIT	\$ 183.99	5%	\$	174.79
Imaging	379370	CDW INSTALLING CUSTOM PDA IMAGE	\$ 17.99	5%	\$	17.09
Imaging	534223	CDW STANDARD IMAGE DEPLOYMENT DT/NB	\$ 32.99	5%	\$	31.34
Imaging	763587	FLASH DRIVE IMAGING	\$ 9.99	5%	\$	9.49
Imaging	763593	CDW USB RESTORE UPTO 16GB	\$ 39.99	5%	\$	37.99
Imaging	809048	CDW MAINTAIN CUSTOM PC IMAGE-CREDIT	\$ 31.99	5%	\$	30.39
Imaging	1640342	CDW INSTALLING ALTIRIS SERVER IMAGE	\$ 113.99	5%	\$	108.29
Imaging	1926223	CDW TERMINAL IMAGE DEPLOYMENT	\$ 32.99	5%	\$	31.34
Imaging	2691836	CDW ZERO TOUCH IMAGE DEPLOYMENT	\$ 32.99	5%	\$	31.34
Imaging	2798606	CDW IMAGE MODEL MIGRATION CREDIT	\$ 113.99	5%	\$	108.29

Imaging	2869570	CDW USB RESTORE UPTO 32GB	\$ 52.99	5%	\$	50.34
Imaging	3652393	CDW CREATE CUSTOM RECOVERY PARTITION	\$ 353.99	5%	\$	336.29
Imaging	3765107	SERVER RACKING ADV IMAGING SVC	\$ 219.99	5%	\$	208.99
Imaging	3982809	CDW USB RESTORE SVC UPTO 64GB	\$ 63.99	5%	\$	60.79
Imaging	4008336	CHROME WHITE GLOVE SERVICE TIER1	\$ 22.93	5%	\$	21.78
Imaging	4008354	CHROME WHITE GLOVE SERVICE TIER2	\$ 24.93	5%	\$	23.68
Imaging	4419882	CHROME UNMANAGED KIOSK APP INSTALL	\$ 28.92	5%	\$	27.47
Imaging	4086723	CDW IMAGE DEPLOY W BOX LABEL REQ6281	\$ 33.99	5%	\$	32.29
Imaging	4086738	CDW SCCM SRV-ZERO TOUCH W/BOX LABEL	\$ 33.99	5%	\$	32.29
Laser Etching / Color Branding						
Laser Etching	1461344	CDW LASER ETCHING-TIER 1 STATIC SML	\$ 11.00	5%	\$	10.45
Laser Etching	2815190	CDW LASER ETCHING-TIER 2 STATIC LRG	\$ 15.00	5%	\$	14.25
Laser Etching	2815191	CDW LASER ETCHING-TIER 3 DYNAMIC	\$ 22.00	5%	\$	20.90
Color Branding	3223260	CDW COLOR BRANDING TEMPLATE	\$ -	5%	\$	-
Color Branding	4100630	CDW COLOR BRANDING TIER 1	\$ 15.00	5%	\$	14.25
Color Branding	3223250	CDW COLOR BRANDING TIER 2	\$ 22.00	5%	\$	20.90
Color Branding	3436605	CDW COLOR BRANDING TIER 3	\$ 30.00	5%	\$	28.50
Mobile Carts						
Mobile Carts	4466480	CDW CHROMEBOOK WIRE CART CONFIG	\$ 120.00	5%	\$	114.00
Netcom						
Netcom	311718	CDW NETWORK & SECURITY DEVICE CONFIG	\$ 40.00	5%	\$	38.00
Netcom	1550455	CDW NETWORK & SEC CHASSIS CONFIG BUN	\$ 100.00	5%	\$	95.00
Netcom	1550460	CDW NETWORK & SEC DEVICE CONFIG BUN	\$ 65.00	5%	\$	61.75
Netcom	2394839	CDW NETWORK & SEC CHASSIS CONFIG	\$ 70.00	5%	\$	66.50
Netcom	2432019	CDW VPN DOMAIN JOIN ONLY	\$ 8.00	5%	\$	7.60
Netcom	3628500	CDW VPN DOMAIN JOIN ONLY-PCA	\$ 8.00	5%	\$	7.60
Netcom	3651585	CDW AP/ENDPOINT PROVISIONING	\$ 30.00	5%	\$	28.50
Netcom	4121801	CDW AP/ENDPOINT FIRMWARE UPDATE	\$ 16.00	5%	\$	15.20
Netcom	4219966	CDW CLIENT VPN CONFIGURATION	\$ 12.00	5%	\$	11.40
Other						
Other	504311	CDW HP ILO ACTIVATION	\$ 12.00	5%	\$	11.40
Other	872360	CDW SYSTEM BIOS/FIRMWARE UPG	\$ 16.00	5%	\$	15.20
Other	1197175	CDW CUSTOM IP CONFIGURATION	\$ 12.00	5%	\$	11.40
Other	1197180	CDW BIOS CUSTOMIZATION	\$ 5.00	5%	\$	4.75
Other	1369901	CDW SRVC CUSTOM ADDED INSERTS	\$ 5.00	5%	\$	4.75
Other	1369904	CDW DDS / COMPUTRACE ACTIVATION	\$ 5.00	5%	\$	4.75
Other	1369905	CDW DATA CAPTURE & TRACKING SRVC	\$ 5.00	5%	\$	4.75
Other	1713539	CDW SPECIAL CONFIG REQ - 1 CREDIT	\$ 5.00	5%	\$	4.75
Other	1713542	CDW SPECIAL CONFIG REQ - 6 CREDITS	\$ 30.00	5%	\$	28.50
Other	1713544	CDW SPECIAL CONFIG REQ - 12 CREDITS	\$ 60.00	5%	\$	57.00
Other	2366694	CDW APPLE IOS CUSTOMIZATION LVL 1	\$ 15.00	5%	\$	14.25
Other	2366709	CDW APPLE IOS CUSTOMIZATION LVL 2	\$ 30.00	5%	\$	28.50
Other	2613286	CDW ANDROID CUSTOMIZATION LVL 1	\$ 15.00	5%	\$	14.25
Other	2613287	CDW ANDROID CUSTOMIZATION LVL 2	\$ 30.00	5%	\$	28.50
Other	2671476	CDW SCREEN OVERLAY INSTALL SERVICE	\$ 8.00	5%	\$	7.60
Other	2696504	CDW Hard Drive Data Encryption DT/NB	\$ 12.00	5%	\$	11.40
Other	2828923	CDW SAS RAID Activation	\$ 12.00	5%	\$	11.40
Other	2858009	CDW KINDLE AD REMOVAL REQ1329	\$ 30.00	5%	\$	28.50

Other	3553290	CDW APPLE ID CREATION	\$ 5.00	5%	\$	4.75
Other	3899153	CDW VPRO BASIC ACTIVATION REQ4717	\$ 5.00	5%	\$	4.75
Other	4248044	CDW LENOVO IMM ACTIVATION	\$ 12.00	5%	\$	11.40
Other	4176320	CDW ASSET MGMT UPDATE SVC REQ 5634	\$ 1.25	5%	\$	1.19
Software						
Software	76056	CDW APPLICATION INSTALL DT/NB	\$ 36.00	5%	\$	34.20
Software	76980	CDW NETWORK OPERATING SYSTEM INSTALL	\$ 200.00	5%	\$	190.00
Software	346243	CDW STD WINDOWS CLIENT OS INSTALL	\$ 90.00	5%	\$	85.50
Software	931000	CDW NETWORK APPLICATION INSTALL	\$ 100.00	5%	\$	95.00
Software	1197183	CDW APPLICATION UPDATES AND MAINTENANCE	\$ 22.00	5%	\$	20.90
Software	1278296	CDW OEM MFG OS INSTALLATION	\$ 90.00	5%	\$	85.50
Software	1291101	CDW LINUX INSTALLATION OS-ALL VERS	\$ 120.00	5%	\$	114.00
Software	1550439	SUN SOLARIS INSTALLATION – ALL VERSIONS	\$ 200.00	5%	\$	190.00
Software	1550447	VMWARE INSTALLATION – ALL VERSIONS	\$ 70.00	5%	\$	66.50
Software	3803347	CDW SOFTWARE CONFIG FOR PRINTER	\$ 24.00	5%	\$	22.80
Software	3982800	CDW HDD OS SWAP SVC REQ5012	\$ 36.00	5%	\$	34.20
Configuration Project Management / COI						
Proj. Mgmt	3110955	CDW CONFIG PROJECT COORD HRLY CREDIT	\$ 75.00	5%	\$	71.25
Proj. Mgmt	4289890	CDW CONFIG PM 150 HRLY CHARGE	\$ 150.00	5%	\$	142.50
Proj. Mgmt	3536706	CDW COI PROJ COORD /OPS COST	\$ 5,000.00	5%	\$	4,750.00
Proj. Mgmt	3543509	CDW CONFIG PROJECT COORD CREDIT/UNIT	\$ 5.00	5%	\$	4.75
Proj. Mgmt	3752290	CDW PROJ MNGMNT CONFIG AP SVC	\$ 7.00	5%	\$	6.65
Proj. Mgmt	4086747	CONFIGS SERVICES PROJ MGMT(PER UNIT)	\$ 1.00	5%	\$	0.95
Proj. Mgmt	4087191	CONFIGS SERVICES PROJ MGMT(PER UNIT)	\$ 0.50	5%	\$	0.48
COI	3268855	CDW CONFIG PROJECT COORD COI SVC	\$ 300.00	5%	\$	285.00
COI	3561536	COI OPS PALLET RECEIVING/PROCESSING	\$ 480.00	5%	\$	456.00
COI	4439488	COI OPS PALLET/MONTH REC/PRO	\$ 40.00	5%	\$	38.00
COI	3659769	CDW COI OPERATIONAL EXPENSE WITH SN	\$ 10.00	5%	\$	9.50
COI	3827583	COI TEMP TAG NO INSTALL E-MAIL	\$ 10.00	5%	\$	9.50



Direct Dial: 239-590-4556
Fax: 239-590-4539

BENJAMIN R. SIEGEL, CPA, C.M.
EXECUTIVE DIRECTOR

October 1, 2021

RICHARD W.M. WESCH
PORT AUTHORITY ATTORNEY

Anup Sreedharan, Senior Manager, Program Management
CDW Government, LLC
230 N. Milwaukee Ave.
Vernon Hills, IL 60061

**BOARD OF
PORT COMMISSIONERS**

RE: Omnia/Mesa, AZ Contract 2018011 Piggyback 21-99NJD - Information
Technology Solutions and Services

BRIAN HAMMAN

Dear Mr. Sreedharan:

FRANK MANN

Please find the agreement for the referenced Sourcewell Contract Piggyback attached for your signature. It is important that you follow the instructions below and furnish the following documents within seven (7) calendar days from the date of this correspondence:

CECIL L. PENDERGRASS

KEVIN RUANE

1. Two originals of the agreement are required. Sign the attached agreement in blue ink in duplicate. Have your signature sealed and witnessed on both originals. Please leave the date blank on both originals. The date will be filled in at the time the agreement is executed by the Port Authority. An officer of the corporation must sign both agreements. Agreements signed by a representative other than an officer must be provided along with proof of the signatory's authority to bind the corporation.

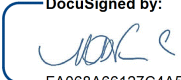
RAY SANDELLI

2. Certificate of Insurance. Provide the certificate of insurance which fully complies with the insurance requirements set forth in the attached agreement.

3. Return the signed, sealed and witnessed agreements and the certificate of insurance to:

Nick Diaz, Senior Procurement Agent
LEE COUNTY PORT AUTHORITY PURCHASING OFFICE
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913-8213

A fully executed copy of the agreement will be furnished to you for your records upon approval. The Lee County Port Authority looks forward to doing business with you.

Sincerely, 
Melissa M. Wendel, CPPO, NIGP-CPP

cc: Mark Trank, Port Authority Attorney
Phillip Murray, Director, Information Technology
Dana Cline, Senior Manager, Information Technology
Raymond Wilf, Senior Manager, Information Technology
Nick Diaz, Senior Procurement Agent

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approve an amendment to the "Lease of TSA Office Space at Southwest Florida International Airport's Midfield Terminal" with the United States of America.
2. **FUNDING SOURCE:** N/A
3. **TERM:** through April 25, 2022
4. **WHAT ACTION ACCOMPLISHES:** Extends the federal government's lease of terminal space for TSA offices to April 25, 2022, incorporates certain non-terminal space used by TSA, and adjusts the rent accordingly.

5. **CATEGORY:** 24.
Administrative Agenda
6. **ASMC MEETING DATE:** 10/19/2021
7. **BoPC MEETING DATE:** 11/4/2021

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

9. **REQUESTOR OF INFORMATION:**
(ALL REQUESTS)
NAME Brian McGonagle
- DIV. Administration

10. BACKGROUND:

On May 9, 2005, the Board approved a "Lease of TSA Office Space at Southwest Florida International Airport's Midfield Terminal" (GSA Lease No. GS-04B-45825) with the United States of America, represented by the General Services Administration (GSA). The lease initially covered approximately 7,631 square feet in the terminal.

The lease has been amended fifteen times thus far, nine times via documents GSA called "Supplemental Lease Agreements," or SLAs, followed by six further documents called "Lease Amendments." These amendments were as follows. SLA #1 confirmed the start date of the lease term, which was the terminal's opening date. SLA #2 updated the parties' addresses for notices. SLA #3 added two storage rooms, and SLA #4 added another storage room. SLA #5 added 1,189 square feet of office space located under the end of Concourse B. SLA #6 added 1,500 square feet in the In Transit Lounge (with rent to commence upon GSA's completion of construction), added one other room, deleted two rooms, and adjusted TSA's employee parking lot charge. SLA #7 confirmed the rent commencement date for the 1,500 square foot addition. SLA #8 added two rooms under Concourse D totaling 776 square feet. SLA #9 added one room and deleted three others. Lease Amendment 10 added 225 square feet near the terminal's loading dock. Lease Amendment 11 granted GSA an option to extend the lease by five (5) years, from its original expiration date of May 31, 2015, to May 31, 2020. Lease Amendment 12 acknowledged GSA's exercise of that option. Lease Amendment 13 deleted one room, and added one room. Lease Amendment 14 deleted six rooms totaling 1,189 square feet. Lease Amendment 15 extended the term of the lease to September 30, 2021.

The terminal expansion project will necessitate relocation of much of TSA's office space. This will be accomplished by

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<i>Benjamin R. Siegel</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)

first relocating TSA's main office area to a temporary location, and later relocating TSA again into new "permanent" space (yet to be constructed) that is expected to be leased for TSA's use on a longer term basis. Some of TSA's smaller office areas are also expected to be permanently vacated during the project. Staff has been working with GSA and TSA to address these changes. However, since all of the move dates are subject to potential change during the course of the project, and, at this time, the only "known" date is that TSA will not be required to make its first move until at least April 26, 2022, it has been deemed preferable to extend the current lease until April 25, 2022. It is expected that either another lease amendment or a new lease, addressing the temporary space and possibly the "permanent" space, will be finalized before then.

This lease reflects extension of the lease of TSA's existing space to April 25, 2022, revises the provisions on deletion of space and lease termination, incorporates 435 square feet of Airport grounds that have previously been leased to the TSA under a separate Memorandum of Agreement, adjusts the rent accordingly, and includes revised Attachments 2 and 3, relating to telecommunications and video equipment, which are required by federal law.

Attachments:

1. Contract Summary
2. Proposed Lease Amendment No. 16

CONTRACT SUMMARY

(including effects of first 15 lease amendments, and the proposed Lease Amendment No. 16)

Type of Agreement: Lease of TSA Office Space at Southwest Florida International Airport's Terminal

Tenant: General Services Administration, an executive agency of the United States of America
7771 W. Oakland Park Blvd. Suite 119
Sunrise, FL 33351-6737

Premises: various locations totaling approximately 9,612 square feet throughout the RSW terminal building, consisting of office space, break rooms, and storage areas [*increasing to add 435 square feet of Airport grounds and existing site improvements ("Magazine Pad")*]

Allowed Use(s): official governmental operations by the Department of Homeland Security, Transportation Security Administration.

Term: commencing on September 9, 2005, and ending September 30, 2021 [*being extended to April 25, 2022*]

Rents/Fees: monthly rent of: \$104,928.06 [*increasing to \$104,946.18 effective October 1, 2021*]

monthly parking fee of: \$15/employee (subject to adjustment)

Insurance: n/a

Performance Guaranty: n/a

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.*

GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE LEASE AMENDMENT	LEASE AMENDMENT No. 16
	TO LEASE NO. GS-04B-45825
ADDRESS OF PREMISES: Southwest Florida International Airport 11000 Terminal Access Road Fort Myers, FL 33913-8209	PDN Number: N/A

THIS AMENDMENT is made and entered into between: **LEE COUNTY PORT AUTHORITY**

whose address is: 11000 TERMINAL ACCESS ROAD
FORT MYERS, FL 33913-8209

hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease to extend the term of the lease, and to add the Magazine Pad to the described premises.

NOW THEREFORE, these parties for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, covenant and agree that the said Lease is amended, effective October 1, 2021, as follows:

A. Paragraph 1 of the Standard Form 2, the lease, and all subsequent Lease Amendments is hereby amended as follows:

“ The Lessor hereby leases to the Government the following described premises:

A total of 9,612 rentable square feet (RSF), yielding 9,612 ANSI/BOMA Office Area (ABOA) square feet (SF) of office and related space, and 435 square feet (SF) of Airport grounds and existing site improvements (herein referred to as “Magazine Pad”), including two TSA explosives storage magazine and a concrete pad to support placement of the magazines, as further defined and depicted in Attachment 1, located at the Southwest Florida International Airport, 11000 Terminal Access Road, Fort Myers, Florida 33913-8209.”

This Lease Amendment contains (2) pages.

All other terms and conditions of the lease shall remain in force and effect.
IN WITNESS WHEREOF, the parties subscribed their names as of the below date.

FOR THE LESSOR:

FOR THE GOVERNMENT:

Name: _____
Title: _____
Entity: _____
Date: _____

Name: _____
Title: Lease Contracting Officer
General Services Administration, Public Buildings Service
Date: _____

WITNESSED FOR THE LESSOR BY:

Name: _____
Title: _____
Date: _____

B. Paragraph 2 as set forth in the Lease and all subsequent Lease Amendments is hereby amended as follows:

“TO HAVE AND TO HOLD the said premises with their appurtenances for the term beginning on September 9, 2005 through April 25, 2022 subject to termination and renewal rights as may be hereinafter set forth.”

C. Paragraph 3 as set forth in the Lease and all subsequent Lease Amendments is hereby deleted and replaced as follows:

“3. The Government shall pay the Lessor annual rent, payable in monthly installments in arrears, at the following rates:”

	OCTOBER 1, 2021 – April 25, 2022 (FIRM)
	ANNUAL RENT
SHELL RENT ¹	\$1,216,267.16
OPERATING COST ²	\$37,775.16
MAGAZINE PAD	\$217.50
OTHER: CABLING/OPTIC COST ³	\$5,094.36
PARKING ⁴	\$0.00
TOTAL ANNUAL RENT	\$1,259,354.18

¹Shell rent calculation:

\$126.54 rounded per RSF multiplied by **9,612** RSF

²Operating Costs rent calculation: **\$3.93 rounded** per RSF multiplied by **9,612** RSF.

³Other Costs (Cabling Optics) calculation: **\$.53** per RSF multiplied by **9,612** RSF.

⁴Parking costs are paid separately through TSA’s Employee Parking Assistance Program

D. Paragraph 4 as set forth in the Lease and all subsequent Lease Amendments is hereby deleted and replaced as follows:

“Either party may terminate this Lease, or delete space from this Lease, by giving the other party a minimum of thirty (30) days advance written notice thereof, in which case, no further rent shall accrue for the deleted or terminated space after the effective date of that deletion or termination. Said notice shall be computed commencing with the day after the day of mailing. Lessor may only give notice of termination under this provision in the event that Lessor’s expansion plans require relocation of Lessee and Lessor provides Lessee with mutually agreeable temporary swing space for the duration of this Lease Agreement.”

E. The following attachments are hereby included as exhibits to the Lease as follows:

- Attachment 1: FAR Representation, 52.204-24, entitled “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.”
- Attachment 2: General Clause Addendum to the Lease with the new FAR clause 52.204-25, entitled “Prohibition on Contracting Certain Telecommunications and Video Surveillance Services or Equipment,” and the new GSAR clause entitled “Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.”

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

LESSOR: _____ GOVERNMENT: _____

Lease Amendment Form
REV (10/20)



Overview Map

Attachment 1

Legend

- TSA Magazine Pad
- Concrete Pad
- Land Lease



Lee County, Florida, State of Florida, GeosEye, Maxar, Microsoft

Lee County, Florida, State of Florida, USDA
ESA, GeosEye, Maxar

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment

See instructions within the representation regarding whether or not completion of this form is required. If required, complete appropriate boxes, sign the form, and return form, along with any other required disclosure information, to LCO or his/her designee.

NOTE: The "Offeror," as used on this form, is the owner of the property offered, not an individual or agent representing the owner.

52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (OCT 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it “does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument” in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Items. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it “does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services” in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

(a) *Definitions.* As used in this provision—

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered telecommunications equipment or services”.

(d) *Representation.* The Offeror represents that—

(1) It will, will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds “will” in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It does, does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds “does” in paragraph (d)(2) of this section.

(e) *Disclosures.* (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded “will” in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded “does” in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model

number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

OFFEROR OR LEGALLY AUTHORIZED REPRESENTATIVE	NAME, ADDRESS (INCLUDING ZIP CODE)	TELEPHONE NUMBER
	_____ Signature	_____ Date

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020)

(a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.*, connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (*e.g.*, voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|---|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a Third Amendment to "Airline-Airport Use and Lease Agreement with United Airlines, Inc."</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: extending from September 30, 2021, to September 30, 2023</p> <p>4. WHAT ACTION ACCOMPLISHES: Extends the Airline-Airport Use and Lease Agreement with United Airlines, Inc. by two years, to September 30, 2023, and adjusts United's leased space.</p> | <p>5. CATEGORY: 25.
Administrative Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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)</p> <p>NAME <u>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p> |
|---|--|

10. BACKGROUND:

United Airlines, Inc. ("United") is a "participating" (also referred to as "signatory") airline at Southwest Florida International Airport pursuant to an "Airline-Airport Use and Lease Agreement" with the Authority dated March 16, 2009, which is set to expire September 30, 2021. The "signatory" agreements have worked well for all parties, allowing the Authority significant financial flexibility in supporting its capital improvement program, while providing a competitive cost structure for the airlines. Accordingly, negotiations have been undertaken toward extending those agreements for an additional two years, to September 30, 2023. The signatory airlines support the proposed extension, and United Airlines, Inc. has signed and returned its proposed lease amendment providing for this extension.

The proposed amendment also makes adjustments to United's leased space in the terminal building.

- Attachments
1. Contract summary
 2. Proposed amendment

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<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> |
|---|---|

Contract Summary

[Including effects of proposed Third Amendment in italics]

Type of Agreement: Airline-Airport Use and Lease Agreement

Carrier: United Airlines, Inc.

Gate(s) C3 and C5

Exclusive Use Space: First floor
313 s.f. baggage service office
2,117 s.f. operations space
4,095 s.f. baggage make-up space

Second floor
1,038 s.f. ticket counter space *[increases to 1,688 s.f. effective upon the Expansion Date]*
1,005 s.f. ticket office space *[increases to 1,435 s.f. effective upon the Expansion Date; increases to 1,531 s.f. effective upon the Reconfiguration Date]*
189 s.f. curbside check-in space (for podium)
48 s.f. curbside storage space

(also allows carrier nonexclusive use of certain ramp space, gate areas, and bag claim areas)

Allowed Use(s): airline passenger and cargo service

Term: commenced October 1, 2008, and expires on September 30, 2021.
[Third Amendment is extending term to September 30, 2023]

Fees: landing fees, terminal rents, aircraft parking charges, and other fees and charges as may apply

Insurance Requirements: \$1 million employers liability; \$50 to \$100 million airport liability (depending on aircraft size); \$100 million aircraft liability; \$5 million business auto liability

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.*

THIRD AMENDMENT
TO
"AIRLINE-AIRPORT USE AND LEASE AGREEMENT"
WITH UNITED AIRLINES, INC.

This agreement is entered into this _____ day of _____, 2021, 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 ("Port Authority"), and **UNITED AIRLINES, INC.** (formerly known as Continental Airlines, Inc.), a Delaware corporation ("Airline").

Background

Port Authority manages and operates Southwest Florida International Airport, located in Lee County, Florida (the "Airport"). Airline is the surviving corporation resulting from a merger of Continental Airlines, Inc. and United Air Lines, Inc. Port Authority and Airline are, thus, parties to an "Airline-Airport Use and Lease Agreement", dated March 16, 2009, and amended June 24, 2013, and again on November 8, 2018, (the "Agreement"). The Agreement is currently set to expire September 30, 2021. The parties desire to extend the term of the Agreement by two years. However, during the two years, the Authority plans to undertake an expansion of the Airport's terminal building beginning in the fall of 2021. As a necessary part of the terminal expansion project, portions of Airline's existing Ticket

Office Space will be impacted.

The Port Authority and Airline now desire to amend the Agreement to extend the term thereof, and to adjust the space leased by Airline under the Agreement.

NOW THEREFORE, in consideration of the mutual promises herein, the undersigned parties agree to amend the Agreement as follows:

1. The term of the agreement is extended two years, to September 30, 2023. Accordingly, Article 3 of the Agreement shall be deleted and replaced with the following:

"This Agreement shall commence October 1, 2008, and expire September 30, 2023, unless sooner terminated as provided herein."

2. Effective upon the "Expansion Date" (defined below), the Agreement shall be amended such that:

- (a) Airline's Ticket Office Space will be increased from 1,005 square feet to 1,435 square feet, as shown on the attached "Exhibit B, Part II, Revised Page 2 of 7"; and
- (b) Airline's Ticket Counter Space will be increased from 1,038 Square feet to 1,688 square feet, as shown on the attached "Exhibit B, Part II, Revised Page 2 of 7"; and
- (c) The EXHIBIT B PART I will be deleted from the Agreement and replaced with the attached "REVISED EXHIBIT B PART I"; and
- (d) the "Exhibit B, Part II, Page 2 of 7" will be deleted from the Agreement and replaced with the attached "Exhibit B, Part II, Revised Page 2 of 7"; and
- (e) for the purpose of calculation of rents, fees, and any other amounts payable by Airline under the Agreement, the gates and leased areas set forth in the "REVISED EXHIBIT B PART I" shall be used.

The "Expansion Date" means the date on which, as determined by the Authority, rooms #2085 and #2085A (approximately 426 and 133 square feet respectively) shall be added to Airline's Ticket Office Space, room #2086B (approximately 129 square feet) shall be removed from Airline's Ticket Office Space, and additional ticket counter and queuing area shall be added to Airline's Ticket Counter Space. The "Expansion Date" is currently projected to occur on or about December 13, 2021, however, the "Expansion Date" cannot be guaranteed to occur on that exact date and may change depending upon the progress of construction and various operational and other considerations. For purposes of this agreement, the "Expansion Date" will be set by the Authority (in its sole discretion) and conclusively determined by Authority's written notice to Airline designating such date and Airline's Rent shall be adjusted and prorated accordingly.

3. Effective upon the "Reconfiguration Date" (defined below), the Agreement shall be amended such that:

- (a) Airline's Ticket Office Space will be increased from 1,435 square feet to 1,531 square feet, as shown on the attached "Exhibit B Part II Second Revised Page 2 of 7"; and
- (b) The REVISED EXHIBIT B PART I will be deleted from the Agreement and replaced with the attached "SECOND REVISED EXHIBIT B PART I"; and
- (c) the Exhibit B Part II Revised Page 2 of 7 will be deleted from the Agreement and replaced with the attached "Exhibit B Part II Second Revised Page 2 of 7"; and

- (d) for the purpose of calculation of rents, fees, and any other amounts payable by Airline under the Agreement, after the "Reconfiguration Date", the gates and leased areas set forth in the "SECOND REVISED EXHIBIT B PART I" shall be used.

The "Reconfiguration Date" means the date on which, as determined by the Authority, Airline shall regain the use of the newly reconfigured room #2086B which will be approximately 96 square feet. The "Reconfiguration Date" is currently projected to occur on or about February 1, 2022, however, the "Reconfiguration Date" cannot be guaranteed to occur on that exact date and may change depending upon the progress of construction and various operational and other considerations. For purposes of this agreement, the "Reconfiguration Date" will be set by the Authority (in its sole discretion) and conclusively determined by Authority's written notice to Airline designating such date and Airline's Rent shall be adjusted and prorated accordingly.


4. In addition to Port Authority's inspection rights in Section 18.09 of the Agreement, Port Authority's agents or employees will have the right to enter Airline Premises to perform work incidental to and in furtherance of the terminal expansion project. This work may include, but will not necessarily be limited to, I.T., electrical, and HVAC work above the ceiling. The Authority will attempt to coordinate this work with Airline so as to minimize, where practicable, the impact to

Airline's regularly scheduled operations.

5. All other provisions of the Agreement remain unchanged and in full force.

IN WITNESS WHEREOF, the parties hereto have subscribed their names on the date first above written.

UNITED AIRLINES, INC.
(Airline)

By: 

Print name: Michael Yost

Title: Managing Director - Airport Affairs

Date: 9/27/2021

LEE COUNTY PORT AUTHORITY

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

Date: _____

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

REVISED

EXHIBIT B

To

AIRLINE – AIRPORT USE AND LEASE AGREEMENT

With

UNITED AIRLINES, INC.

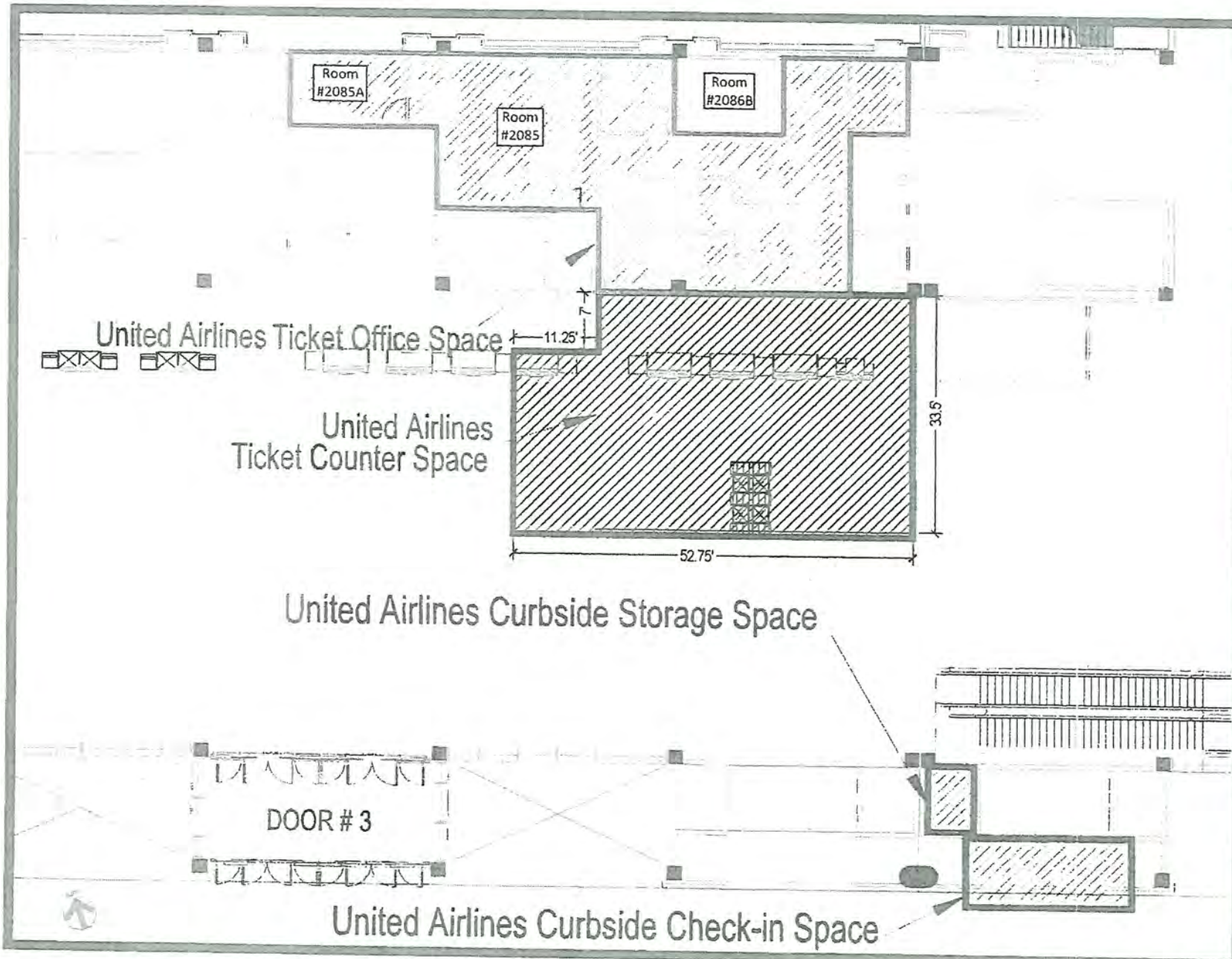
FOR

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

PART 1

Airline shall have in the Terminal:

1. the preferential, but not exclusive, right to use the following gate position(s) and, associated loading bridge(s) and equipment assigned for its use as shown on Page 1 of Part II of this Exhibit B: **C3 and C5**; (the number of Airline's preferentially assigned gate positions shall be used to determine Airline's Apron Fee rent and Gate Area rent);
2. the exclusive use of the following spaces assigned for its use as shown on pages 2 through 4 of Part II of this Exhibit B:
 - (a) 1,688 square feet of ticket counter space;
 - (b) 1,435 square feet of ticket office space;
 - (c) 189 square feet of curbside check-in space;
 - (d) 313 square feet of baggage service office space;
 - (e) 2,117 square feet of operations space;
 - (f) 48 square feet of curbside storage space;
3. the exclusive use of the baggage belt within the **4,095** square foot baggage make-up space, shown on Page 5 of Part II of this Exhibit B;
4. the right of joint use with other airlines to use the Baggage Claim Area in the Terminal as shown on Page 6 of Part II of this Exhibit B.



Southwest Florida
International Airport

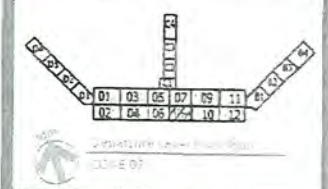
Midfield Terminal

Exhibit B
Part II
Revised
Page 2 of 7

Second Floor
(Departure Level)

United Airlines
Ticket Counter,
Ticket Office, &
Curbside Space

Date: 2 - August - 2021



DATE: 08/02/21
SCALE: 1/8" = 1'-0"

SECOND REVISED

EXHIBIT B

To

AIRLINE – AIRPORT USE AND LEASE AGREEMENT

With

UNITED AIRLINES, INC.

FOR

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

PART 1

Airline shall have in the Terminal:

1. the preferential, but not exclusive, right to use the following gate position(s) and, associated loading bridge(s) and equipment assigned for its use as shown on Page 1 of Part II of this Exhibit B: **C3 and C5**; (the number of Airline's preferentially assigned gate positions shall be used to determine Airline's Apron Fee rent and Gate Area rent);
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 - (a) 1,688 square feet of ticket counter space;
 - (b) 1,531 square feet of ticket office space;
 - (c) 189 square feet of curbside check-in space;
 - (d) 313 square feet of baggage service office space;
 - (e) 2,117 square feet of operations space;
 - (f) 48 square feet of curbside storage space;
3. the exclusive use of the baggage belt within the **4,095** square foot baggage make-up space, shown on Page 5 of Part II of this Exhibit B;
4. the right of joint use with other airlines to use the Baggage Claim Area in the Terminal as shown on Page 6 of Part II of this Exhibit B.



Southwest Florida International Airport

Midfield Terminal

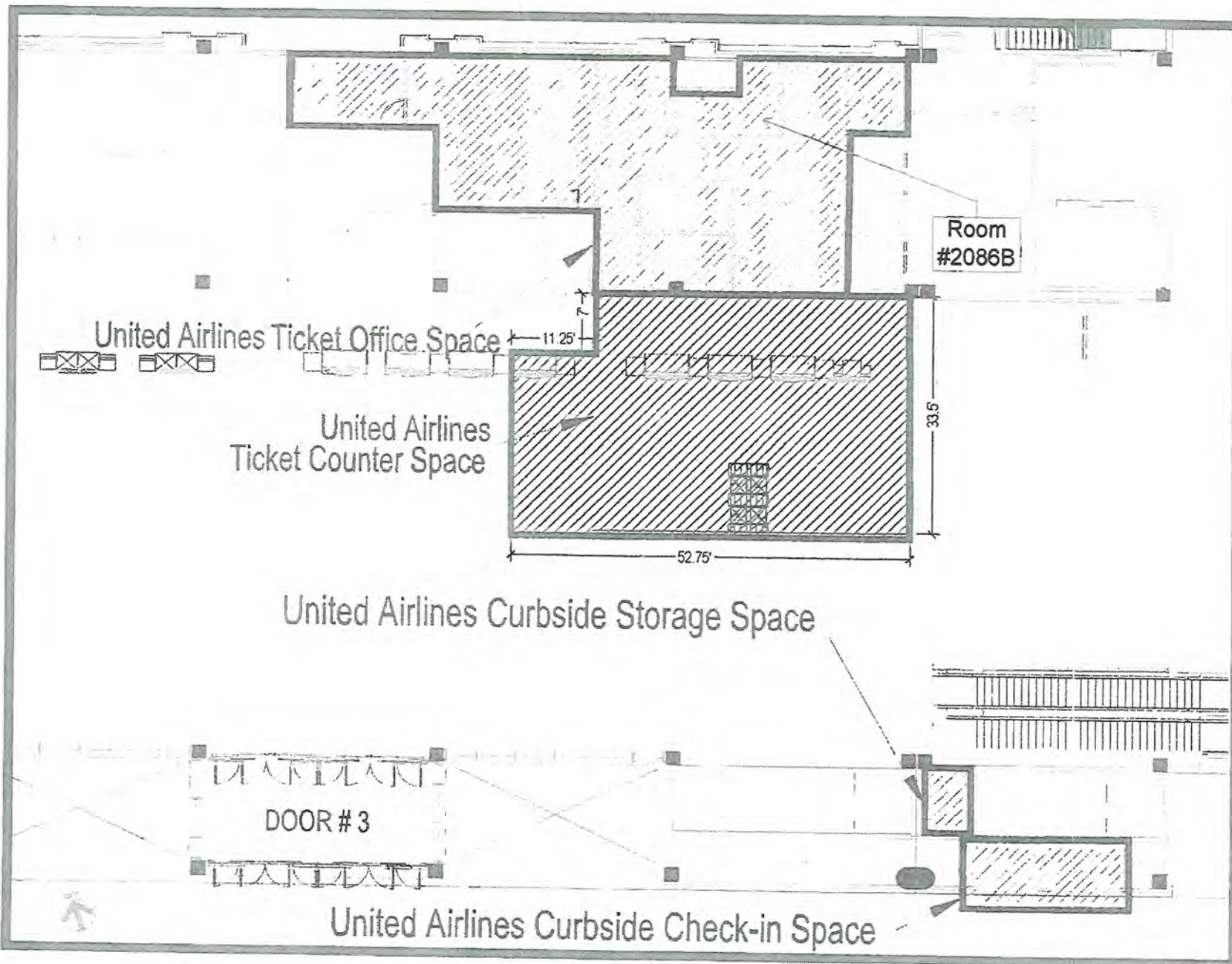
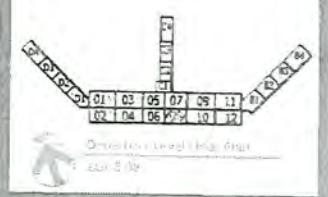
Exhibit B
Part II

Second Revised
Page 2 of 7

Second Floor
(Departure Level)

United Airlines
Ticket Counter,
Ticket Office, &
Curbside Space

Date: 2 - August - 2021



BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|---|---|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a Sixth Amendment to "Airline-Airport Use and Lease Agreement" with Spirit Airlines, Inc.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: extending from September 30, 2021, to September 30, 2023</p> <p>4. WHAT ACTION ACCOMPLISHES: Extends the Airline-Airport Use and Lease Agreement with Spirit Airlines, Inc. by two years, to September 30, 2023, and adjusts Spirit's leased space.</p> | <p>5. CATEGORY: 26.
Administrative Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p> |
|---|---|

10. BACKGROUND:

Spirit Airlines, Inc. ("Spirit") is a "participating" (also referred to as "signatory") airline at Southwest Florida International Airport pursuant to an "Airline-Airport Use and Lease Agreement" with the Authority dated November 10, 2008, which, as amended to date, is set to expire September 30, 2021. The "signatory" agreements have worked well for all parties, allowing the Authority significant financial flexibility in supporting its capital improvement program, while providing a competitive cost structure for the airlines. Accordingly, negotiations have been undertaken toward extending those agreements for an additional two years, to September 30, 2023. The signatory airlines support the proposed extension, and Spirit Airlines, Inc. has signed and returned its proposed lease amendment providing for this extension.

The proposed amendment also makes adjustments to Spirit's leased space in the terminal building.

Attachments

1. Contract summary
2. Proposed amendment

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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> |
|---|---|

Contract Summary

[Including effects of proposed Sixth Amendment in italics]

Type of Agreement: Airline-Airport Use and Lease Agreement

Carrier: Spirit Airlines, Inc.

Gate(s): D2 and D4

Exclusive Use Space: First floor
318 s.f. baggage service office
1,098 s.f. operations space
4,095 s.f. baggage make-up space

Second floor
940 s.f. ticket counter space
565 s.f. ticket office space *[decreases to 555 s.f. effective on completion of ticket office reconfiguration]*

Allowed Use(s): airline passenger and cargo service

Term: commenced October 1, 2008, and expires September 30, 2021
[Sixth Amendment is extending term to September 30, 2023]

Fees: landing fees, terminal rents, aircraft parking charges, and other fees and changes as may apply

Insurance Requirements: \$1 million employers liability; \$50 to \$100 million airport liability (depending on aircraft size); \$100 million aircraft liability; \$5 million business auto liability

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 summary and the proposed contract, the contract (being more precise) will prevail.*

SIXTH AMENDMENT
TO
"AIRLINE-AIRPORT USE AND LEASE AGREEMENT"
WITH SPIRIT AIRLINES, INC.

This agreement is entered into this _____ day of _____, 2021, 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 ("Port Authority"), and **SPIRIT AIRLINES, INC.**, a Delaware corporation ("Airline").

Background

Port Authority manages and operates Southwest Florida International Airport, located in Lee County, Florida (the "Airport"). Port Authority and Airline are parties to an "Airline-Airport Use and Lease Agreement", dated November 10, 2008, and amended March 11, 2014, March 3, 2016, March 9, 2017, October 10, 2017, and November 8, 2018 (the "Agreement"). The Agreement is currently set to expire September 30, 2021. The parties desire to extend the term of the Agreement by two years. However, during the two years, the Authority plans to undertake an expansion of the Airport's terminal building beginning in the fall of 2021. As a necessary part of the terminal expansion project, portions of Airline's existing Ticket Office Space will be impacted.

The Port Authority and Airline now desire to amend the

Agreement to extend the term thereof, and to adjust the space leased by Airline under the Agreement.

NOW THEREFORE, in consideration of the mutual promises herein, the undersigned parties agree to amend the Agreement as follows:

1. The term of the agreement is extended two years, to September 30, 2023. Accordingly, Article 3 of the Agreement shall be deleted and replaced with the following:

"This Agreement shall commence October 1, 2008, and expire September 30, 2023, unless sooner terminated as provided herein."

2. Effective upon the "Reconfiguration Date" (defined below), the Agreement shall be amended such that:

- (a) Airline's 565 square feet of Ticket Office Space will be decreased to 555 square feet, and will be as shown on the attached FIFTH REVISED EXHIBIT B; and
- (b) The FOURTH REVISED EXHIBIT B will be deleted from the Agreement and replaced with the attached "FIFTH REVISED EXHIBIT B"; and
- (c) for the purpose of calculation of rents, fees, and any other amounts payable by Airline under the Agreement, the gates and leased areas set forth in the FIFTH REVISED EXHIBIT B shall be used.

The "Reconfiguration Date" means the date on which, as determined by the Authority, the newly reconfigured room #2061707 (which will be approximately 94 square feet) shall become part of Airline's Ticket Office Space and Airline shall vacate room #2061706.01, a.k.a. #2065H which is approximately 104 square

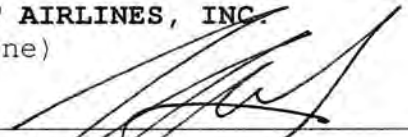
feet. The "Reconfiguration Date" is currently projected to occur on or about February 19, 2022, however, the "Reconfiguration Date" cannot be guaranteed to occur on that exact date, and may change depending upon the progress of construction and various operational considerations. For purposes of this agreement, the "Reconfiguration Date" will be set by the Authority (in its sole discretion) and conclusively determined by Authority's written notice to Airline designating such date and Airline's Rent shall be adjusted and prorated accordingly. Authority will provide notice of the Reconfiguration Date to Airline at least fifteen (15) days in advance.

3. In addition to Port Authority's inspection rights in Section 18.09 of the Agreement, Port Authority's agents or employees will have the right to enter Airline Premises to perform work incidental to and in furtherance of the terminal expansion project. This work may include, but will not necessarily be limited to, I.T., electrical, and HVAC work above the ceiling. The Authority will attempt to coordinate this work with Airline so as to minimize, where practicable, the impact to Airline's regularly scheduled operations.

4. All other provisions of the Agreement remain unchanged and in full force.

IN WITNESS WHEREOF, the parties hereto have subscribed their names on the date first above written.

SPIRIT AIRLINES, INC.
(Airline)

By: 

Print name: CW Spruchfer

Title: VP - CRE

Date: 9/21/2021

LEE COUNTY PORT AUTHORITY
By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

Date: _____

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

FIFTH REVISED

EXHIBIT B

To

AIRLINE – AIRPORT USE AND LEASE AGREEMENT

With

SPIRIT AIRLINES, INC.

FOR

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

PART I

Airline shall have in the Terminal:

1. the preferential, but not exclusive, right to use the following gate position(s) and, associated loading bridge(s) and equipment assigned for its use as shown on Page 1 of Part II of this Exhibit B: **D2 and D4** (the number of Airline's preferentially assigned gate positions shall be used to determine Airline's Apron Fee rent and Gate Area rent); and
2. the exclusive use of the following spaces assigned for its use as shown on pages 2 through 4 of Part II of this Exhibit B:
 - (a) 940 square feet of ticket counter space;
 - (b) 555 square feet of ticket office space;
 - (c) 318 square feet of baggage service office space;
 - (d) 1,098 square feet of operations space; and
3. the exclusive use of the baggage belt within the 4,095 square foot baggage make-up space, as shown on Page 5 of Part II of this Exhibit B; and
4. the right of joint use with other airlines to use the Baggage Claim Area in the Terminal as shown on Page 6 of Part II of this Exhibit B;

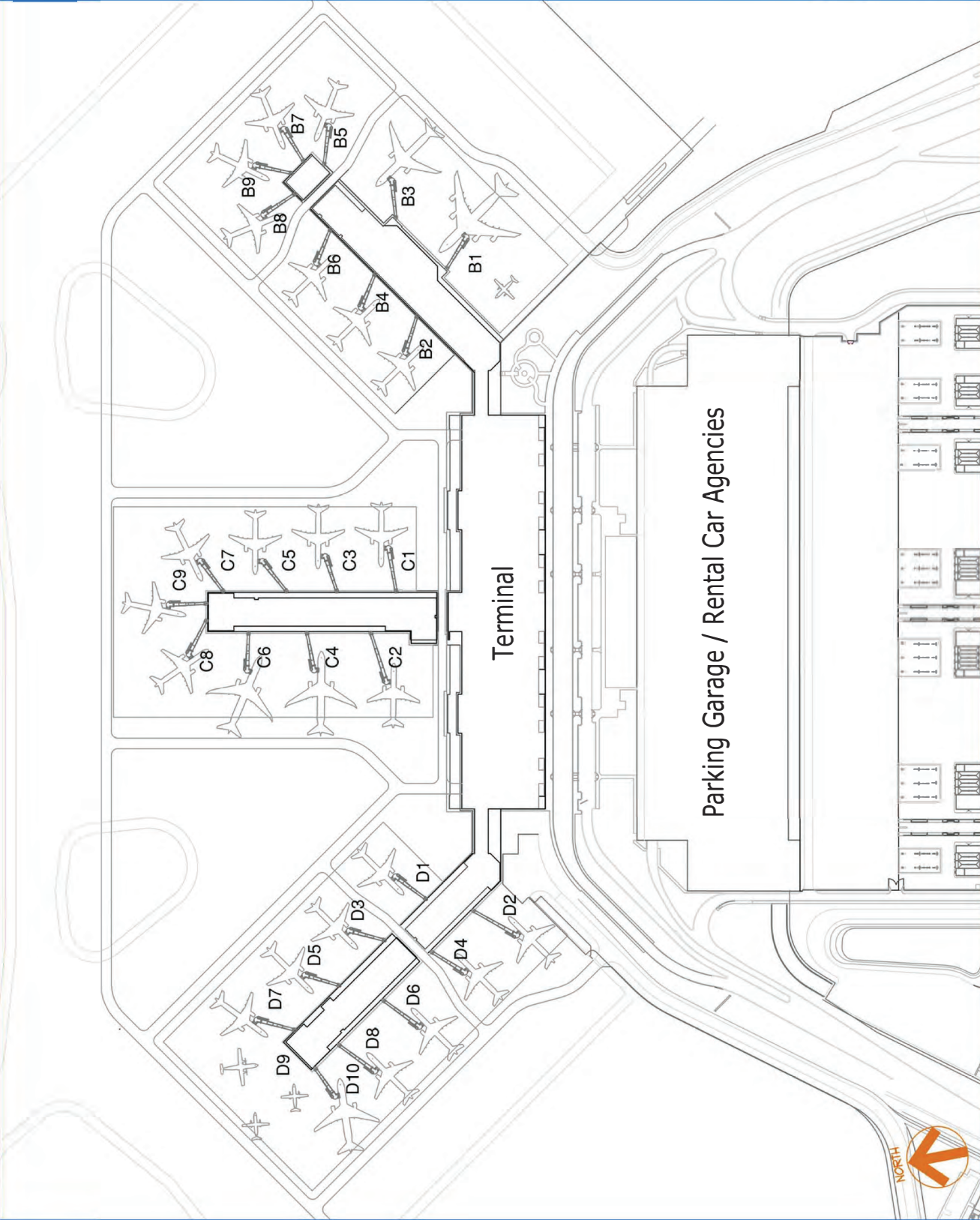
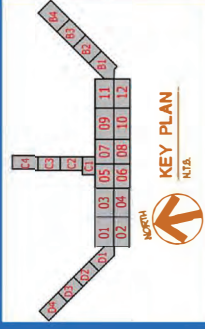


Terminal Building

FIFTH REVISED
EXHIBIT B
Part II
(Page 1 of 7)

Gate
Designation

Date: 12 - May - 2021





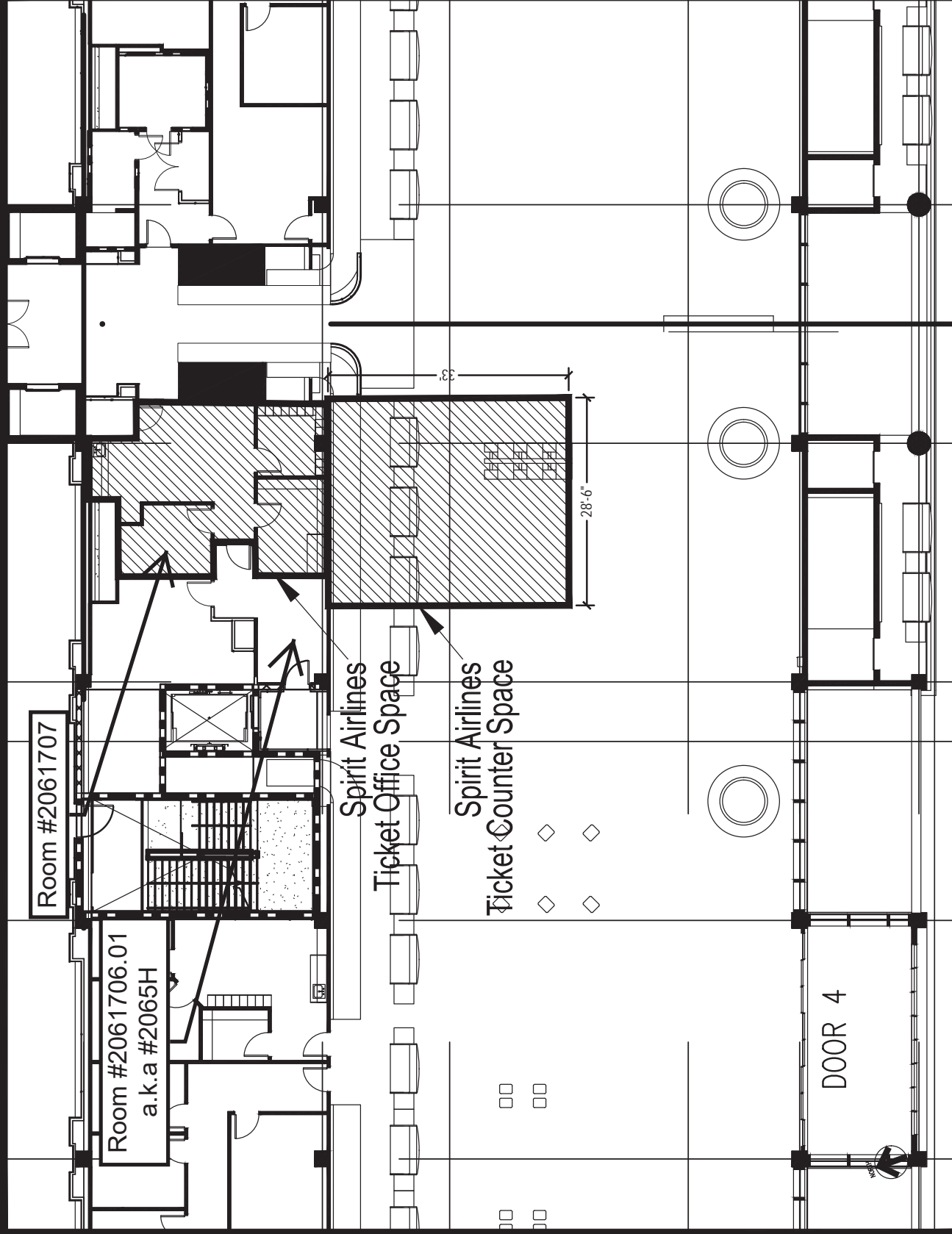
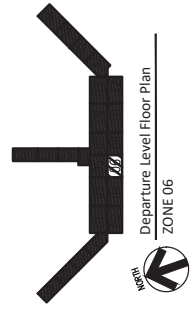
Midfield Terminal

Fifth Revised
Exhibit B
Part II
(Page 2 of 7)

Second Floor
(Departure Level)

Spirit Airlines
Ticket Counter &
Ticket Office

Updated: 8 - June - 2021





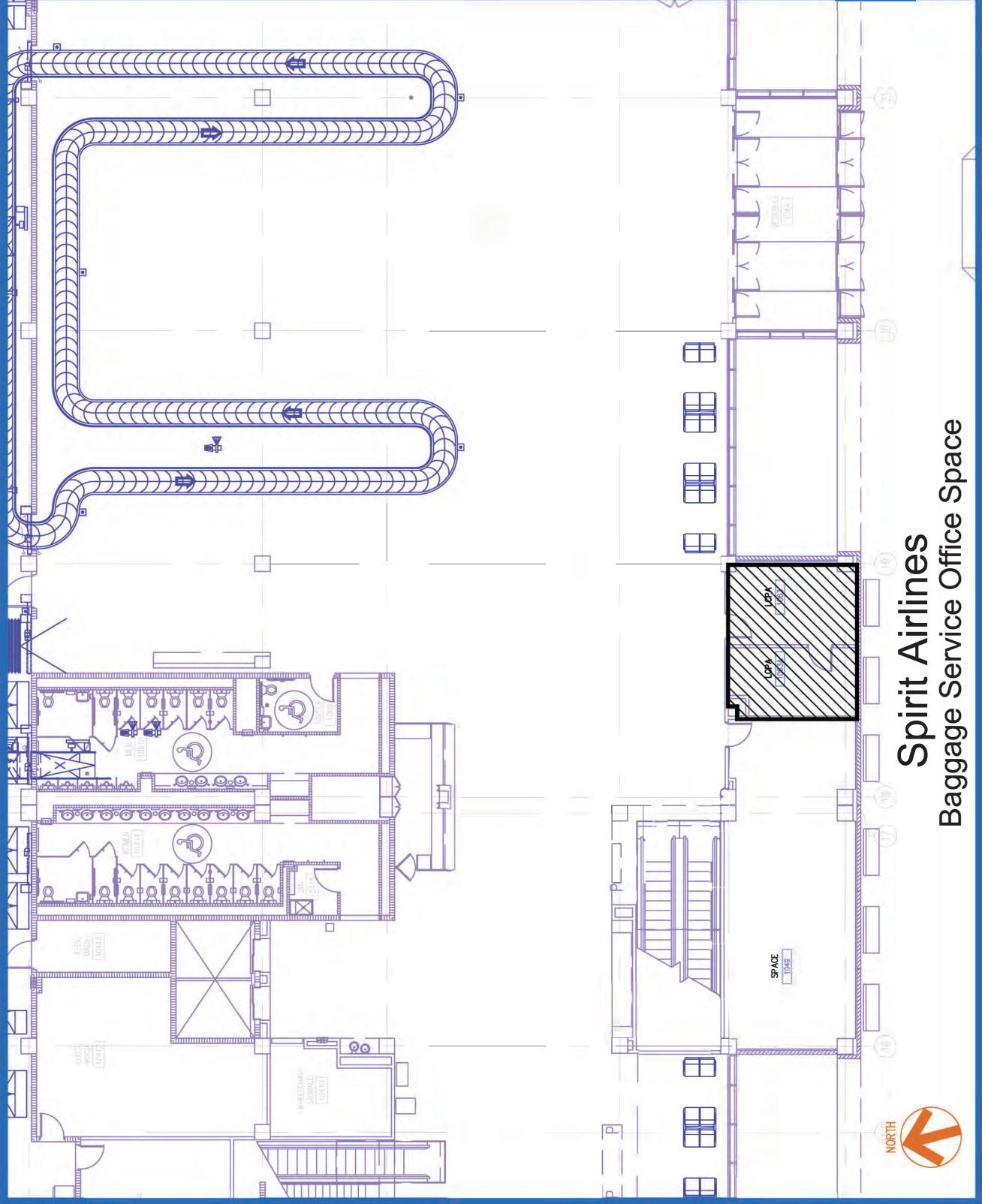
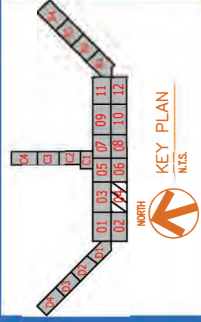
Midfield Terminal

FIFTH REVISED
Exhibit B
Part II
(Page 3 of 7)

First Floor
(Arrival Level)

Spirit Airlines
Baggage Service
Office Space

Date: 12 - May - 2013



Spirit Airlines
Baggage Service Office Space



Terminal Building

FIFTH REVISED

EXHIBIT B

Part II

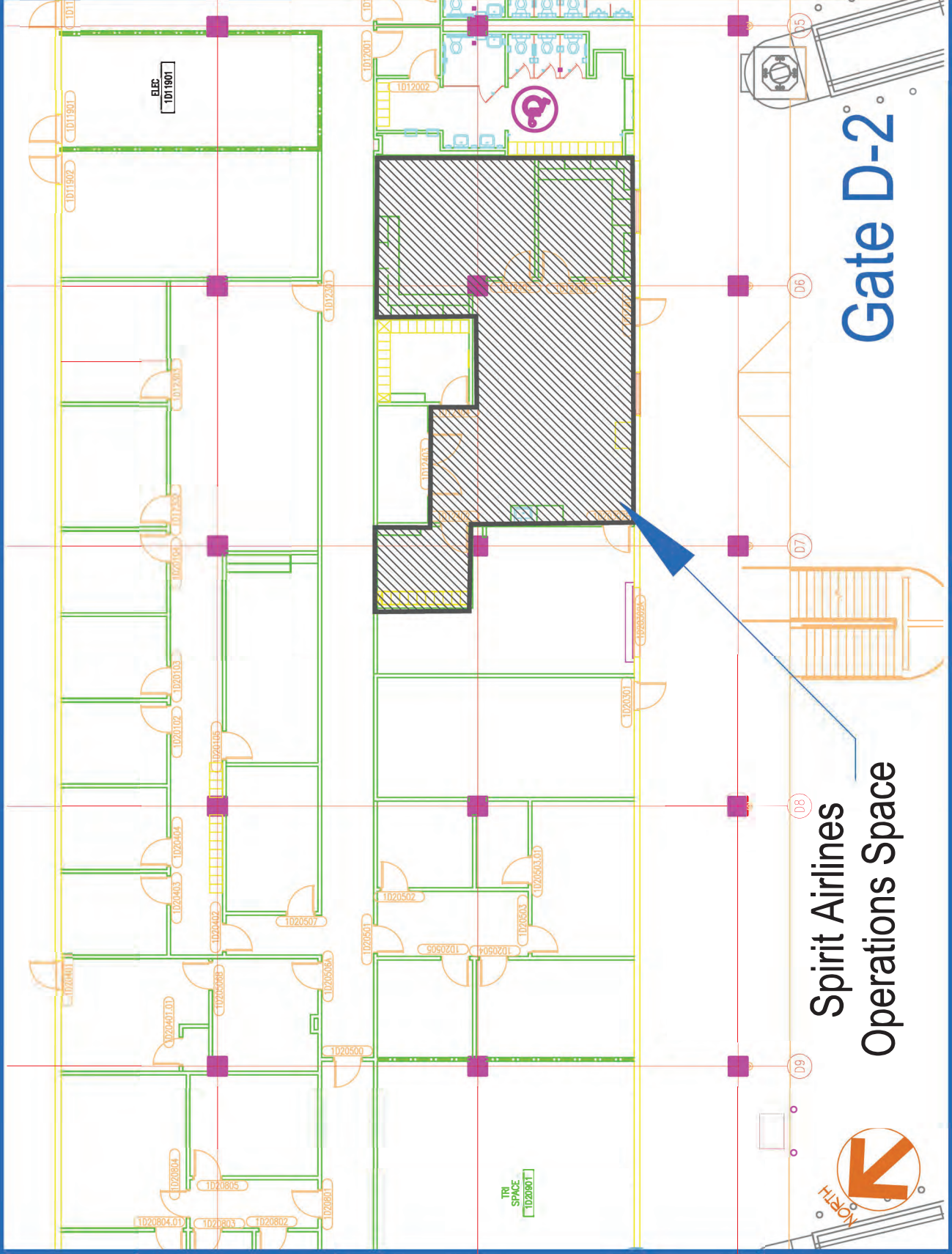
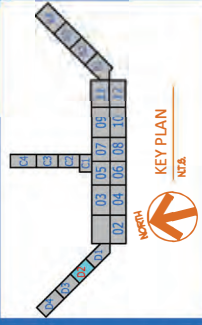
(Page 4 of 7)

First Floor
Arrivals Level
(Below
Concourse D)

Spirit Airlines

Operations Space

Date: 12 - May - 2021



Gate D-2

Spirit Airlines
Operations Space



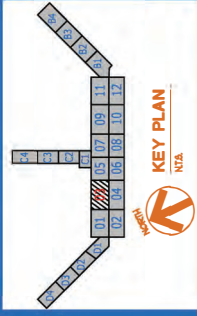


Midfield Terminal
FIFTH REVISED
EXHIBIT B
Part II
(Page 5 of 7)

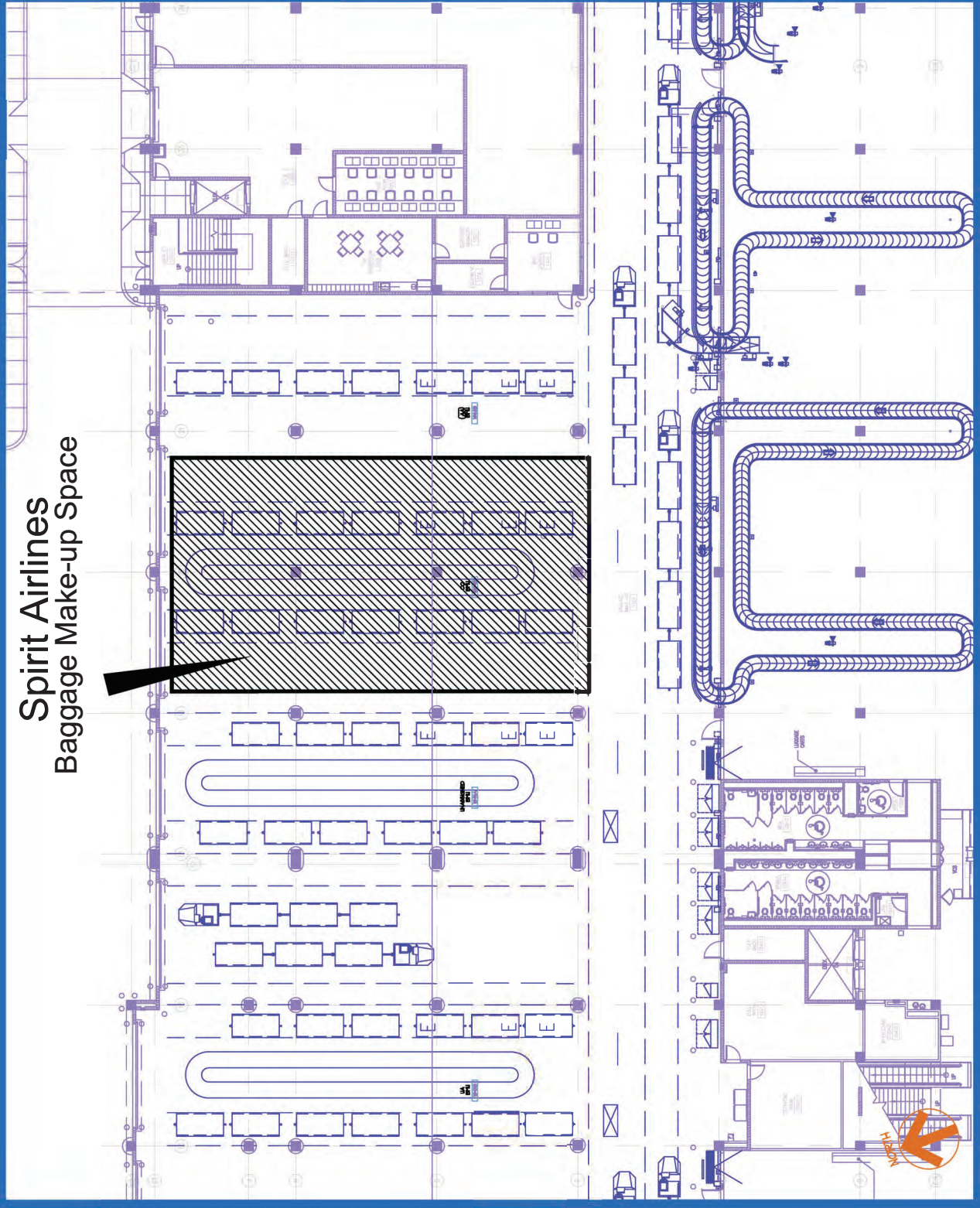
First Floor
(Arrival Level)

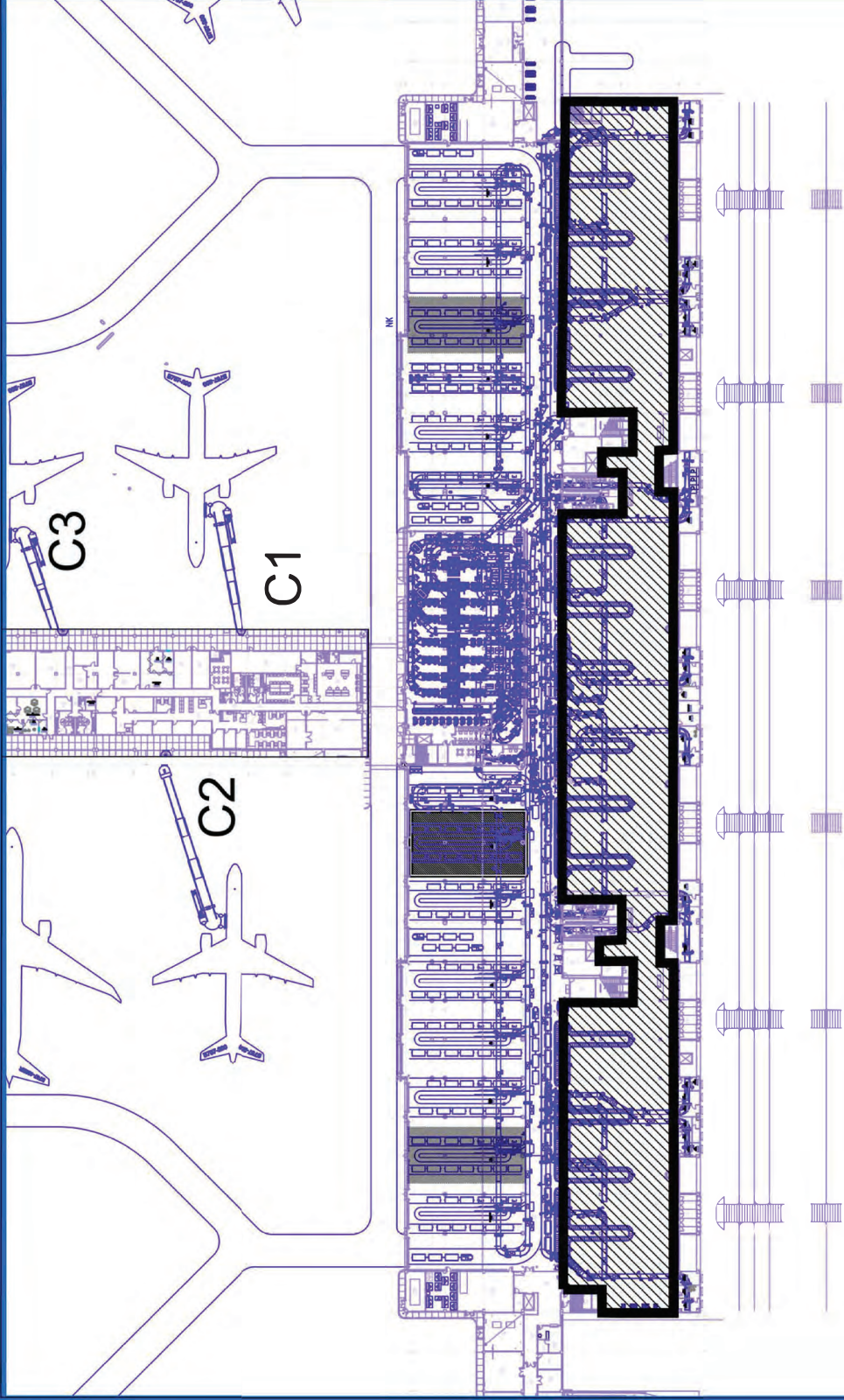
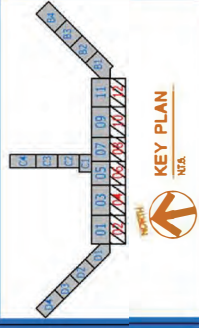
Spirit Airlines
Baggage Make-Up
Space

Date: 12 - May - 2021



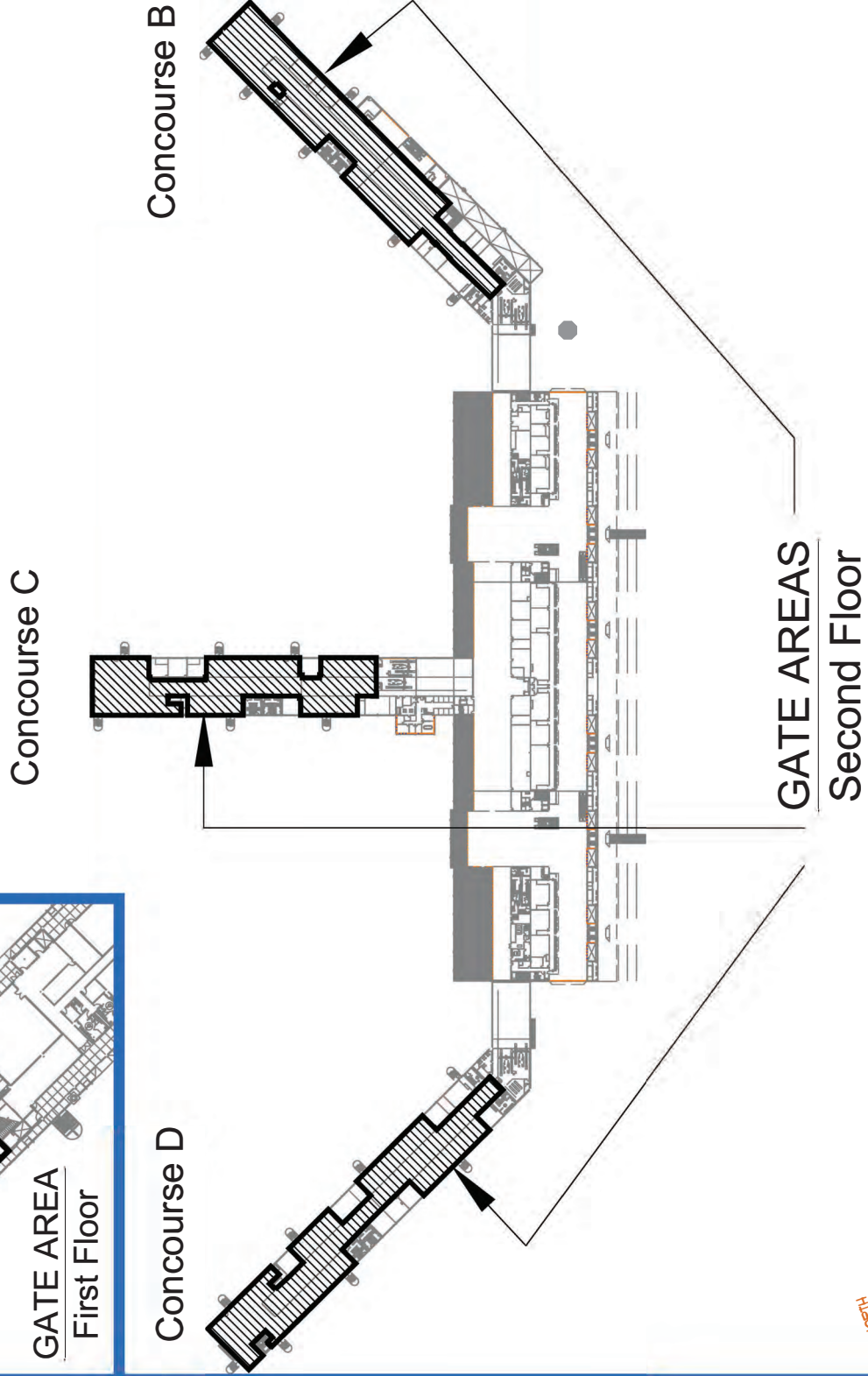
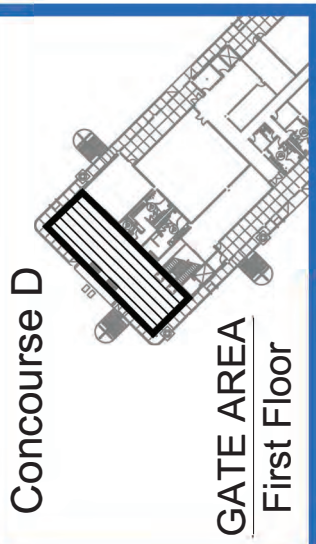
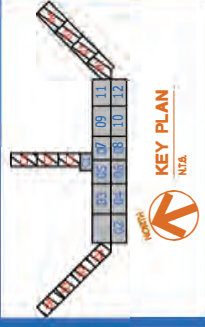
Spirit Airlines
Baggage Make-up Space





Baggage Claim Area
Lower Level





BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

- | | |
|--|---|
| <p>1. REQUESTED MOTION/PURPOSE: Request Board approve a Fifth Amendment to "Airline-Airport Use and Lease Agreement" with American Airlines, Inc.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: extending from September 30, 2021, to September 30, 2023</p> <p>4. WHAT ACTION ACCOMPLISHES: Extends the Airline-Airport Use and Lease Agreement with American Airlines, Inc. by two years, to September 30, 2023.</p> | <p>5. CATEGORY: 27.
Administrative Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</p> |
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- | | |
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| <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)</p> <p>NAME <u>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p> |
|---|--|

10. BACKGROUND:

American Airlines, Inc. is a "participating" (also referred to as "signatory") airline at Southwest Florida International Airport pursuant to an "Airline-Airport Use and Lease Agreement" with the Authority dated March 16, 2009, which as amended to date, is set to expire September 30, 2021. The "signatory" agreements have worked well for all parties, allowing the Authority significant financial flexibility in supporting its capital improvement program, while providing a competitive cost structure for the airlines. Accordingly, negotiations have been undertaken toward extending those agreements for an additional two years, to September 30, 2023. The signatory airlines support the proposed extension, and American Airlines, Inc. has signed and returned its proposed lease amendment providing for this extension.

- Attachments
1. Contract summary
 2. Proposed amendment

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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> |
|---|---|

Contract Summary

[Including effects of proposed Fifth Amendment in italics]

Type of Agreement: Airline-Airport Use and Lease Agreement

Carrier: American Airlines, Inc.

Gate(s) D-1, D-3, and D-5

Exclusive Use Space: First floor
316 s.f. baggage service office
1,978 s.f. operations space
4,095 s.f. baggage make-up space

Second floor
1,412.5 s.f. ticket counter space
1,656 s.f. ticket office space
94 s.f. curbside check-in space

(agreement also allows carrier nonexclusive use of certain ramp space, gate areas, and bag claim areas)

Allowed Use(s): airline passenger and cargo service

Term: commenced October 1, 2008, and expires on September 30, 2021
[Fifth Amendment is extending term to September 30, 2023]

Fees: landing fees, terminal rents, aircraft parking charges, and other fees and charges as may apply

Insurance Requirements: \$1 million employers liability; \$50 to \$100 million airport liability (depending on aircraft size); \$100 million aircraft liability; \$5 million business auto liability

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.*

FIFTH AMENDMENT
TO
"AIRLINE-AIRPORT USE AND LEASE AGREEMENT"
WITH AMERICAN AIRLINES, INC.

This agreement is entered into this _____ day of _____, 2021, 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 ("Port Authority"), and **AMERICAN AIRLINES, INC.**, a Delaware corporation ("Airline").

Background

Port Authority manages and operates the Southwest Florida International Airport, located in Lee County, Florida (the "Airport"). Port Authority and Airline are parties to an "Airline-Airport Use and Lease Agreement", dated March 16, 2009, as amended March 11, 2014, June 25, 2015, May 5, 2016 (by an "Agreement to Consolidate the 'Airline-Airport Use and Lease Agreements' of American Airlines, Inc. and US Airways, Inc."), and January 17, 2018 (the "Agreement"). The Port Authority and Airline now desire to amend the Agreement to extend the term thereof.

NOW THEREFORE, in consideration of the mutual promises herein, the undersigned parties agree to amend the Agreement as follows:

1. The term of the agreement is extended two years, to September 30, 2023. Accordingly, Article 3 of the Agreement

shall be deleted and replaced with the following:

"This Agreement shall commence October 1, 2008, and expire September 30, 2023, unless sooner terminated as provided herein."

2. All other provisions of the Agreement remain unchanged and in full force.

IN WITNESS WHEREOF, the parties hereto have subscribed their names on the date first above written.

AMERICAN AIRLINES, INC.

(Airline)

By: *Lenore Diamond*
Print name: Lenore Diamond
Title: Managing Director
Date: 9-29-2021

WITNESSED BY:

Witness: *Karen Jackson*
Print Name: Karen Jackson
Witness: *Rebecca Coffman*
Print Name: Rebecca Coffman

LEE COUNTY PORT AUTHORITY

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

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

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Board approve a participating airline "Airline-Airport Use and Lease Agreement" with Sun Country, Inc.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: October 1, 2021 to September 30, 2023</p> <p>4. WHAT ACTION ACCOMPLISHES: Adds Sun Country, Inc. to Southwest Florida International Airport's group of participating (i.e. signatory) airlines.</p>	<p>5. CATEGORY: 28. Administrative Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</p>
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<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)</p> <p>NAME <u>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p>
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10. BACKGROUND:

Sun Country, Inc. (f/k/a MN Airlines, LLC), a Minnesota corporation (d/b/a Sun Country Airlines) operates at Southwest Florida International Airport under an agreement with the Authority dated March 6, 2003, entitled "Nonparticipating Airline Airport Use Permit." To support its operations, Sun Country leases operations space and airline ticket office space pursuant to a "Lease of Terminal Space" dated June 27, 2019.

Sun Country desires to become one of the "participating" (i.e. "signatory") airlines at RSW, which would entitle the airline to certain specified participation in both the financial risks and rewards of operating the airport. The term of the proposed agreement will begin October 1, 2021, and will expire September 30, 2023. The proposed agreement provides the airline with space in the terminal, including the preferential use of one (1) gate, and the use of 4,640.5 square feet of "exclusive space," as shown on Exhibit B.

This proposed agreement will replace Sun Country's Nonparticipating Airline Airport Use Permit, and Sun Country's 2019 Lease of Terminal Space.

Attachments:

1. Contract Summary
2. Proposed Airline-Airport Use and Lease Agreement

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<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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Contract Summary

Type of Agreement: Airline-Airport Use and Lease Agreement

Carrier: Sun Country, Inc.
2005 Cargo Road
Minneapolis, MN 55450

Gate(s) B-9

Exclusive Use Space: First floor
4,095 s.f. baggage make-up space

Second floor
437.5 s.f. ticket counter space
108 s.f. ticket office space

(Agreement also allows carrier nonexclusive use of certain ramp space, gate areas, and bag claim areas)

Allowed Use(s): airline passenger and cargo service

Term: commences October 1, 2021, and expires on September 30, 2023

Fees: landing fees, terminal rents, aircraft parking charges, and other fees and charges as may apply

Insurance Requirements: \$1 million employers liability; \$50 to \$100 million airport liability (depending on aircraft size); \$100 million aircraft liability; \$5 million business auto liability

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.*

AIRLINE-AIRPORT USE AND LEASE AGREEMENT

FOR

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

BY AND BETWEEN

LEE COUNTY PORT AUTHORITY

AND

SUN COUNTRY, INC.

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LIST OF EXHIBITS

<u>Exhibit</u>	<u>Title</u>
Exhibit A	Airport Boundaries
Exhibit B	Airline Premises
Exhibit C	Summary of Terminal Areas
Exhibit D	Responsibilities of AUTHORITY and AIRLINE for Operation and Maintenance of the Terminal
Exhibit E	Sample Reporting Forms
Exhibit F	Changes in Rates for Rentals, Fees and Charges

AIRLINE-AIRPORT USE AND LEASE AGREEMENT

THIS AIRLINE-AIRPORT USE AND LEASE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2021, by and between the Lee County Port Authority, hereinafter referred to as “AUTHORITY,” and SUN COUNTRY, INC., a corporation organized and existing under the laws of the State of Minnesota and authorized to do business in the State of Florida, (d/b/a Sun Country Airlines) hereinafter referred to as “AIRLINE.”

WITNESSETH:

WHEREAS, AUTHORITY has the custody, control and management of Southwest Florida International Airport (which, as it now exists or hereafter may be modified, extended, or expanded, is hereafter called the “Airport,” as set forth in Exhibit A attached hereto) under grant of authority by legislative act of Lee County, Florida, owner of the Airport, located in Lee County, Florida; and

WHEREAS, AUTHORITY has the legal and sole responsibility for the operation, maintenance, improvement and promotion of the Airport System, as that term is defined herein, in Lee County, Florida; and

WHEREAS, AUTHORITY has the right to lease, license, or otherwise provide for the use of land, property and facilities of the Airport System and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, AIRLINE is engaged in the business of transportation by air of persons, property, mail, parcels and/or cargo; and

WHEREAS, AIRLINE desires to lease certain premises, obtain certain rights, services and privileges in connection with the use of the Airport and its facilities, and AUTHORITY is willing to grant and lease the same to AIRLINE upon the terms and conditions hereinafter stated; and

WHEREAS, AIRLINE and AUTHORITY agree to enter into this Agreement, specifying the rights and obligations of the parties with respect to the use and occupancy of the Airport by AIRLINE;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein

contained, AUTHORITY and AIRLINE do hereby mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:

ARTICLE 1: DEFINITIONS

The following words, terms and phrases wherever used in this Agreement shall for the purposes of this Agreement have the following meanings:

1.01 Affiliate shall mean an Air Transportation Company that is (i) a parent or subsidiary of AIRLINE; or (ii) shares an International Air Transport Association (IATA) code with AIRLINE at the Airport (code-sharing partner); or (iii) otherwise operates under essentially the same trade name as AIRLINE at the Airport and uses essentially the same livery as AIRLINE; provided that no "major" airline (as defined by the FAA) shall be classified as an Affiliate of another "major" airline, unless either clause (i) or (iii) above defines the relationship between such airlines at the Airport. A Signatory Airline must designate in writing to the AUTHORITY any Air Transportation Company that will be an Affiliate of that Signatory Airline at the Airport. Affiliates shall have the rights afforded AIRLINE without payment of any additional charges or premiums, provided AIRLINE (a) remains a Signatory Airline to this Agreement; (b) agrees and shall be obligated to serve as a financial guarantor for all rentals, fees, and charges incurred by any Affiliate of AIRLINE at the Airport. AIRLINE shall be responsible for any and all unpaid rentals, fees, and charges of any such Affiliate while such Affiliate operates at the Airport.

1.02 Agreement shall mean this Airline-Airport Use and Lease Agreement between AUTHORITY and AIRLINE, as the same may be amended, modified or altered from time to time pursuant to the terms hereof.

1.03 Air Cargo Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues associated with those areas and facilities that are related to the air cargo activities at the Airport, including the air cargo aircraft parking apron.

1.04 Air Transportation Business shall mean that business operated by AIRLINE at the Airport for the commercial transportation by air of persons, property, mail, parcels and/or cargo.

1.05 Air Transportation Company shall mean a legal entity engaged in the business of scheduled or non-scheduled commercial transportation by air of persons, property, mail, parcels and/or cargo.

1.06 Airfield shall mean those portions of the Airport, excluding the Terminal Aircraft Aprons and the Cargo Aircraft Aprons, provided for the landing, taking off, and taxiing of aircraft, including without

limitation, approach and turning zones, clear zones, aviation or other easements, runways, a fully integrated taxiway system, runway and taxiway lights, and other appurtenances related to the aeronautical use of the Airport, including any property purchased for noise mitigation purposes, as set forth in Exhibit A and as may be revised from time to time.

1.07 Airfield Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues for the Airfield.

1.08 AIRLINE shall mean the Air Transportation Company executing this Agreement.

1.09 Airline Premises shall mean those areas in the Terminal assigned to AIRLINE as Exclusive Use Premises, Preferential Use Premises, or Joint Use Premises, as defined herein, and shown in Exhibits B and C, attached hereto.

1.10 Airline Supported Cost Centers shall mean the Airfield Cost Center, Apron Cost Center, and the Terminal Cost Center.

1.11 Airport shall mean Southwest Florida International Airport, owned by Lee County, Florida and operated by AUTHORITY, under grant of authority by legislative act of Lee County, Florida, the boundaries of which are more particularly shown in Exhibit A, attached hereto, including all real property easements or any other interest therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned leased or operated by AUTHORITY.

1.12 Airport Affairs Committee (AAC) shall mean collectively the authorized representatives of each Signatory Airline which shall meet from time to time with representatives of AUTHORITY to receive information and provide input with regard to selected operation and development matters of the Airport.

1.13 Airport System shall mean all real property or any interest therein, including improvements thereto, structures, buildings, fixtures, and other personal property, which are located on the Airport, Page Field, Mitigation Park, or any airport hereafter owned, leased or operated by AUTHORITY.

1.14 Amortization shall mean the return on Recognized Net Investment made by AUTHORITY after

September 30, 2022 with its own AUTHORITY funds (excluding Bond proceeds; proceeds from insurance resulting from casualty damage to or destruction of improvements on the Airport System; federal or state grant funds; and PFC's) for new capital improvements or acquisitions on the Airport System equal to the total of the annual amortization of the amount of each item of Recognized Net Investment over its useful life in principal and interest amounts which together represent equal annual payments, with interest computed at AUTHORITY's interest cost. Amortization will commence in the Fiscal Year immediately following the Date of Beneficial Occupancy (DBO).

1.15 Apron Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues for the Terminal Aircraft Apron immediately adjoining the Terminal for the purposes of transferring passengers between aircraft parked thereon and the Terminal.

1.16 AUTHORITY shall mean the Lee County Port Authority, a body politic and corporate, created by Special Act of the Legislature, Chapters 63-1541, Laws of Florida, and Chapters 125 and 322, Florida Statutes, and further implemented and authorized to exercise the powers outlined in those acts in 1990 by Lee County Ordinance No. 90-02, as amended and later codified and restated as Lee County Ordinance No. 01-014, adopted on September 10, 2001. The Authority is responsible for operations, management, and development of properties, facilities, and systems and personnel associated with air or sea transportation or commerce located in Lee County.

1.17 Aviation Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues for those areas and facilities related to general aviation (GA), including any GA terminal facilities, fixed-base operator (FBO) facilities, fueling facilities, hangars, flight kitchens, and any other facilities for the purposes of supporting aviation-related activities.

1.18 Board shall mean the Board of Port Commissioners of Lee County, Florida.

1.19 Bond Resolution shall mean Resolution No. 92-08-48 adopted by the Board on August 26, 1992, as amended, restated, and supplemented.

1.20 Bonds shall mean the Lee County Florida Airport Revenue Bonds issued pursuant to the Bond Resolution.

1.21 Capital Expenditure shall mean an expenditure, equal to or greater than \$100,000, made to acquire, purchase or construct a single capital item or project for the purpose(s) of improving, maintaining or developing the Airport System, and shall include expenses incurred for development, study, analysis, review, design, or planning efforts.

1.22 Cargo Aircraft Aprons shall mean those areas of the Airport that are designated for the parking of cargo aircraft and support vehicles, and the loading and unloading of cargo aircraft, as shown in Exhibit A, attached hereto.

1.23 Common Use Premises shall mean those non-exclusive areas of the Airport (excluding Public Space), used in common by AIRLINE, along with other authorized users of the Airport, along with all facilities, improvements, equipment and services which are, or hereafter may be, provided for such common-use, as shown in Exhibits B and C, attached hereto.

1.24 Cost Centers shall mean those areas or functional activities of the Airport System used for the purposes of accounting for Revenues, O&M Expenses, Amortization, and Investment Service.

1.25 Coverage shall mean twenty-five percent (25%) of the Debt Service payable on Bonds in each Fiscal Year.

1.26 Debt Service shall mean any principal, interest, premium, and other fees and amounts either paid or accrued for Bonds, and such other accounts which may be established for payment of principal, interest, premium and other fees and amounts associated with Subordinated Indebtedness.

1.27 Debt Service Reserve Fund shall mean the fund created by the Bond Resolution for maintaining a balance equal to the maximum annual Debt Service on all outstanding Bonds.

1.28 Deplaned Passenger shall mean any passenger disembarking an aircraft at the Terminal, including any such passenger that shall subsequently board another aircraft of the same or a different Air Transportation Company or the same aircraft, previously operating under a different flight number.

1.29 Enplaned Passenger shall mean any passenger boarding an aircraft at the Terminal, including any such passenger that previously disembarked from another aircraft of the same or a different Air

Transportation Company or from the same aircraft, previously operating under a different flight number.

1.30 Exclusive Use Premises shall mean those portions of the Terminal assigned exclusively to AIRLINE, as shown in Exhibit B, attached hereto.

1.31 Executive Director shall be the Executive Director of AUTHORITY, and shall include such person or persons as may from time to time be authorized in writing by AUTHORITY or by the Executive Director or applicable law to act for the Executive Director with respect to any or all matters pertaining to this Agreement.

1.32 Extraordinary Coverage Protection shall mean those payments in the rentals, fees, and charges for Signatory Airlines at the Airport in any Fiscal Year in which the amount of Revenues, less O&M Expenses is projected to be less than the one hundred twenty-five percent (125%) of the annual Debt Service, as required by the Bond Resolution. Any amounts which must be collected for such Extraordinary Coverage Protection payments will be allocated to the Airfield Cost Center and the Terminal Cost Center on the basis of the Net Requirement of the Airfield Cost Center and the Terminal Cost Center.

1.33 FAA shall mean the Federal Aviation Administration, or its authorized successor(s).

1.34 Fiscal Year shall mean the annual accounting period of AUTHORITY for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve consecutive months, ending with the last day of September of any year.

1.35 Investment Service shall mean, with respect to any Fiscal Year, the sum of (1) Debt Service (exclusive of capitalized interest) and Other Debt Service payable by AUTHORITY in that Fiscal Year; plus (2) Coverage.

1.36 Joint Use Formula shall mean that formula which prorates twenty percent (20%) of the cost of a service or space as defined in Exhibit F, equally to all Signatory Airlines, and eighty percent (80%) allocated to all Signatory Airlines, based on the ratio of each Signatory Airline's Enplaned Passengers annually at the Airport. When determining the number of Scheduled Air Carriers sharing in the twenty percent (20%) portion of the Common Use Formula, all individual Scheduled Air Carriers that are Affiliates of a Signatory Airline shall be combined and considered a single Signatory Airline.

1.37 Joint Use Premises shall mean those Terminal areas which may be assigned to two or more Scheduled Air Carriers, as shown on Exhibit B and Exhibit C attached hereto.

1.38 Landing Fee shall mean a fee expressed in tenths of a cent per thousand pounds of the Maximum Gross Landed Weight of each type of AIRLINE's aircraft and shall be multiplied by the total of all Maximum Gross Landed Weight for all Chargeable Landings of each type of aircraft landed at the Airport by AIRLINE.

1.39 Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for which each aircraft operated at the Airport by AIRLINE as certificated by the FAA or its successor.

1.40 Net Requirement shall mean, with respect to the Terminal, the direct and indirect O&M Expenses for the Terminal and reserves therefore, plus its proportional share of Investment Service, plus Amortization, less reimbursements; with respect to the Airfield, the direct and indirect O&M Expenses for the Airfield and reserves therefore, plus its proportional share of Investment Service, plus Amortization, less Non-Airline Revenues of the Airfield Cost Center.

1.41 Nonaviation Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues for those areas and facilities not directly related to aviation purposes, including, but not limited to, commercial buildings, U.S. Postal Service facilities, and various ground leases and facilities.

1.42 Non-Airline Revenues shall mean those rentals, fees and charges received by AUTHORITY from Airport System lessees, permittees, concessionaires, users, and patrons other than Scheduled Air Carriers.

1.43 Non-Revenue Landing shall mean any aircraft landing by AIRLINE at the Airport for a flight for which AIRLINE receives no revenue, and shall include irregular and occasional ferry or emergency flights, which shall include any flight, that after having taken off from the Airport and without making a landing at any other airport, returns to land at the Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

1.44 Operating Expenses (O&M Expenses) shall mean the current expenses, paid or accrued, for operation, maintenance, and ordinary current repairs of said Airport System and shall include, without limiting

the generality of the foregoing, insurance premiums, administrative expenses of the Authority relating solely to the Airport System, including engineering, architectural, legal, airport consultants, and accounting fees and expenses, and fees and expenses of the Trustee, and such other reasonable current expenses as shall be in accordance with sound accounting practice. O&M Expenses shall not include any allowance for depreciation or renewals or replacements or obsolescence of capital assets of the Airport System, or any operating expenses of Special Purpose Facilities buildings where the lessees thereof are obligated to pay such operating expenses.

1.45 Operating Expenditure Reserve Requirement (O&M Reserve Requirement) shall mean the Bond Resolution requirement that a reserve be created and maintained at an amount not more than one-fourth (1/4) of the annual budget then in effect for O&M Expenses.

1.46 Other Debt Service shall mean any principal, interest, premium, and other fees and amounts, either paid or accrued, on Other Indebtedness of AUTHORITY.

1.47 Other Indebtedness shall mean any debt incurred by AUTHORITY for Airport System purposes which is outstanding and not authenticated and delivered under and pursuant to the Bond Resolution, or any Subordinated Bond Resolution.

1.48 Passenger Facility Charge (PFC) shall mean the fees authorized by 49 USC 40117 and regulated by 14 CFR Part 158 as such statute and regulations currently exist or as they may be amended during the Term of this Agreement.

1.49 Preferential Use Premises shall mean those portions of the Terminal and Terminal Aircraft Aprons assigned to AIRLINE, as shown in Exhibits B and C, attached hereto, to which AIRLINE shall have priority over other users, subject to the provisions of Article 16.

1.50 Public Space shall mean all utility rooms, ductways, janitorial rooms and closets, stairways, hallways, elevators, escalators, entrance-ways, public or common use lobbies and areas, public toilet areas and other areas used for the operation, maintenance or security of the Terminal, even if used solely by AUTHORITY; as shown on Exhibit B, attached hereto.

1.51 Recognized Net Investment shall mean AUTHORITY's cost of an improvement, equal to or greater than \$100,000, or an acquisition made on or for the Airport System (including without limitation the cost of construction, testing, architects' and engineers' fees, consultants' fees, construction management fees,

inspection and surveillance by AUTHORITY engineer, condemnation, relocation expenses, brokers' fees), reduced by the amount of any federal or state grant or PFC received by AUTHORITY therefore, shall be considered Recognized Net Investment beginning in the Fiscal Year in which the improvement or acquisition is completed.

1.52 Rentable Square Feet with respect to the Terminal shall mean the number of square feet of space in the Terminal that is rentable to tenants, including office and administrative space used by AUTHORITY.

1.53 Revenue Fund shall mean that fund for the deposit of Revenues, as defined under the Bond Resolution, derived from the operation of the Airport System.

1.54 Revenue Landing shall mean any aircraft landing by AIRLINE at the Airport for which AIRLINE receives revenue, including flights diverted from another airport to the Airport due to meteorological reasons.

1.55 Revenues shall mean income accrued by AUTHORITY in accordance with generally accepted accounting practices, including investment earnings, from or in connection with the ownership or operation of the Airport System or any part thereof, or the leasing or use thereof.

1.56 Scheduled Air Carrier shall mean any Air Transportation Company performing or desiring to perform, pursuant to published schedules, seasonal or non-seasonal commercial air transportation services over specified routes to and from the Airport and holding the necessary authority from the appropriate federal or state agencies to provide such transportation.

1.57 Signatory Airline shall mean an Air Transportation Company that leases a minimum of one (1) gate, one (1) ticket counter position, and other space in the Terminal deemed sufficient by the Executive Director to support its operation, provided that the total of Terminal space is at least 4,000 square feet, and has an agreement with AUTHORITY substantially similar to this Agreement. An Affiliate of a Signatory Airline, as defined herein, will be treated as a Signatory Airline for the purposes of this Agreement, subject to certain restrictions and requirements as defined herein.

1.58 Subordinated Indebtedness shall mean any bonds or other financing instrument or obligation subordinate to the Bonds, issued pursuant to any Subordinated Bond Resolution.

1.59 Subordinated Bond Resolution shall mean a Bond Resolution subordinated to the Bond Resolution authorizing the issuance by AUTHORITY of Subordinated Indebtedness, as such may be supplemented or amended from time to time.

1.60 Substantial Completion shall mean the date on which AUTHORITY's architects and/or engineers certify any premises at the Airport to be substantially complete as to permit use and occupancy by AIRLINE, or the date AIRLINE actually takes occupancy of the premises, whichever comes first.

1.61 Surplus Fund shall mean that fund created by the Bond Resolution.

1.62 TSA shall mean the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

1.63 Term shall mean the period of time during which AIRLINE's activities at the Airport shall be governed by this Agreement. Said Term shall begin on the Effective Date as defined in Section 2.01, and, except as otherwise set forth herein, terminate on the date set forth in Article 3.

1.64 Terminal Aircraft Aprons shall mean those areas of the Airport that are designated for the parking of passenger aircraft and support vehicles, and the loading and unloading of passenger aircraft.

1.65 Terminal shall mean the passenger terminal building, as set forth in Exhibit A, attached hereto.

1.66 Terminal Cost Center shall mean all Investment Service (allocated by its proportional share of Recognized Net Investment), all direct and indirect O&M Expenses, Amortization, required reserves, and operating Revenues for all passenger Terminal facilities, and other related and appurtenant facilities, whether owned, operated, or maintained by the Authority, an airline, or another tenant; and a portion of the enplanement and deplanement roadways in front of the Terminal.

Additional words and phrases used in this Agreement but not defined herein shall have the meanings as defined under the Bond Resolution or, if not so set forth, shall have their usual and customary meaning.

Article 2: Effective Date and Transition Provisions

2.01 Effective Date. This Agreement, along with the determination of rentals, fees, and charges set forth herein, shall be effective on October 1, 2021.

2.02 Termination of Prior Agreements. Effective September 30, 2021, the “Nonparticipating Airline Airport Use Permit” and the “Lease of Terminal Space at Southwest Florida International Airport,” dated March 6, 2003, and June 27, 2019, respectively, between AIRLINE (f/k/a MN Airlines, LLC) and AUTHORITY, shall be terminated.

ARTICLE 3: TERM

The term of this Agreement shall commence October 1, 2021, and terminate September 30, 2023, unless sooner terminated as provided herein.

ARTICLE 4: PREMISES

4.01 Airline Premises.

A. AUTHORITY does hereby lease and demise to AIRLINE, and AIRLINE does hereby lease and accept from AUTHORITY, the Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises, as set forth in Exhibits B and C.

B. Any changes to Airline Premises, except as set forth herein relating to "as-built" drawings, shall be evidenced by an amendment to this Agreement pursuant to Section 18.18.

C. In the event that changes to Exhibits B, C, or D are made to reflect changes in the leased premises of others, or to reflect other space changes in public-use and common-use areas, then in such event said revised exhibits may be substituted herein without the necessity for amendment of this Agreement.

4.02 Terminal Equipment. Terminal equipment owned or acquired by AUTHORITY for use by AIRLINE shall remain the property and under the control of AUTHORITY.

4.03 Employee Parking. AUTHORITY will make reasonable efforts to make available area(s) at the Airport for vehicular parking for AIRLINE's personnel employed at the Airport; provided, however, such area(s) shall not be used for the storage of vehicles or trailers; and usage of the area(s) is subject to Section 7.05B and to reasonable and non-discriminatory rules and regulations established by AUTHORITY.

4.04 Federal Inspection Facilities. AUTHORITY shall designate areas in the Terminal, or elsewhere on the Airport, to be used by agencies of the United States for the inspection of international passengers and their baggage, and for the exercise of the responsibilities of said agencies with respect to the movement of persons, property, and cargo to and from the United States.

4.05 Transfer of Operations

A. In the event new or expanded facilities are developed at the Airport, AUTHORITY shall give notice to affected Air Transportation Company of the estimated Substantial Completion date at least one

hundred and eighty (180) days prior thereto. The affected Air Transportation Company shall have the right to install in its Exclusive Use Premises and Preferential Use Premises its own equipment and furnishings sixty (60) days prior to the estimated date of Substantial Completion or such other date as may be agreed to by the parties subject to the provisions of Section 9.01, herein; provided, however, no such equipment and furnishings shall be installed in Preferential Use Premises without the written consent of AUTHORITY, which consent will not be unreasonably withheld.

B. The affected Air Transportation Company shall begin its operations from its new or expanded Airline Premises on the date of Substantial Completion thereof.

ARTICLE 5: USE OF THE AIRPORT AND RELATED FACILITIES

5.01 AIRLINE Rights and Privileges. In addition to all rights granted elsewhere in this Agreement, AIRLINE shall have the right to use, in common with others so authorized by AUTHORITY, areas, other than areas leased exclusively or preferentially to others, facilities, equipment, and improvements at the Airport for the operation of AIRLINE's Air Transportation Business and all activities reasonably necessary to such operations, including but not limited to:

A. The landing, taking off, flying over, taxiing, towing, and conditioning of AIRLINE's aircraft and, in areas designated by AUTHORITY, the extended parking, servicing, deicing, loading or unloading, storage, or maintenance of AIRLINE's aircraft and support equipment subject to Paragraphs 5.01F, 5.01G, and 5.02C, and to the availability of space, and subject to such reasonable charges and regulations as AUTHORITY may establish; provided, however, AIRLINE shall not permit the use of the Airfield by any aircraft operated or controlled by AIRLINE which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual.

B. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, freight, and express services, and reasonable and customary airline activities.

C. The training of personnel in the employ of or to be employed by AIRLINE and the testing of aircraft and other equipment being utilized at the Airport in the operation of AIRLINE's Air Transportation Business; provided, however, said training and testing shall be incidental to the use of the Airport in the operation by AIRLINE of its Air Transportation Business and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. AUTHORITY reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by AUTHORITY.

D. The sale, disposition, or exchange of AIRLINE's aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel, or other similar equipment or supplies; provided, however, AIRLINE shall not sell or permit to be sold aviation fuels or propellants except (i) to such Air Transportation Company

which is a successor company to AIRLINE, (ii) for use in aircraft of others which are being used solely in the operation of AIRLINE's Air Transportation Business, including, but not limited to, AIRLINE's code sharing partner(s), or (iii) when a comparable grade and type of fuel desired by others is not available at the Airport except from AIRLINE.

E. The purchase at the Airport or elsewhere, of fuels, lubricants, and any other supplies and services, from any person or company, subject to Paragraph 5.01D and to AUTHORITY's right to require that each provider of services and/or supplies to AIRLINE secures a permit from AUTHORITY to conduct such activity at the Airport, pays required fees, and abides by all reasonable rules and regulations established by AUTHORITY. No discriminatory limitations or restrictions shall be imposed by AUTHORITY that interfere with such purchases; provided, however, nothing herein shall be construed to permit AIRLINE to store aviation fuels at the Airport. Fuel tenders are prohibited on Terminal Aircraft Aprons serviced by the fuel hydrant system except by separate authorization of AUTHORITY. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between AIRLINE and AUTHORITY.

F. The servicing by AIRLINE or its suppliers of aircraft and other equipment being utilized at the Airport by AIRLINE on the Terminal Aircraft Aprons or such other locations as may be designated by the Executive Director.

G. The loading and unloading of persons, property, cargo, parcels and mail by motor vehicles or other means of conveyance reasonably approved by AUTHORITY on or at Terminal Aircraft Aprons or such other locations as may be designated by the Executive Director; provided AIRLINE shall not use Terminal Aircraft Aprons immediately adjacent to the passenger terminal to load or unload all-cargo aircraft unless otherwise authorized in writing by AUTHORITY.

H. The provision, either alone or in conjunction with other Air Transportation Companies or through a nominee, of porter/skycap service for the convenience of the public, at no cost to AUTHORITY.

I. The installation and maintenance, at AIRLINE's sole cost and expense, of identifying signs in AIRLINE's Exclusive Use Premises. Installation shall be subject to the prior written approval of the Executive Director and shall comply with the procedures in the AUTHORITY's Leasehold Development Standards. The general type and design of such signs shall be compatible with and not detract from the

pattern and decor of the Terminal areas. Nothing herein shall be deemed to prohibit AIRLINE's installation on the walls behind ticket counters, inside baggage service offices, and on the exterior of loading bridges associated with preferentially assigned passenger boarding gates, of identifying and company logo signs as are customarily installed by AIRLINE in such areas at comparable airport facilities, subject to the prior written approval of AUTHORITY. However, AIRLINE shall not install any promotional displays or advertising displays in its Airline Premises unless authorized in writing, in advance, by the AUTHORITY.

J. The installation, maintenance, and operation, at no cost to AUTHORITY, of such radio communication, company telephone system, computer, meteorological and aerial navigation equipment, and facilities on AIRLINE's Exclusive Use Premises and Preferential Use Premises as may be necessary or convenient for the operation of its Air Transportation Business; provided, however, that except for equipment and facilities already in place, such installations shall be subject to the prior written approval of the Executive Director. Prior to any written approval, AIRLINE shall provide the Executive Director with all necessary supporting documentation related to such installations. AIRLINE recognizes that AUTHORITY has installed airline-compatible multiuser flight information display systems and AIRLINE shall diligently proceed to use such systems.

K. The use of designated airline cable trays, raceways, and rights of way as may reasonably be required by AIRLINE for communications, computer equipment, teletype, telephone, interphone, conveyor systems and power, and other transmission lines in areas exclusively and preferentially-leased by AIRLINE, subject to the availability of space and/or ground areas as determined by the Executive Director. AUTHORITY reserves the right to require the execution of a separate agreement between AUTHORITY and AIRLINE for the lease and use of such space and/or ground area outside Terminal areas or to provide such service directly to AIRLINE.

L. The installation of personal property, including furniture, furnishings, supplies, machinery, and equipment, in AIRLINE's Exclusive Use Premises and Preferential Use Premises, as AIRLINE may deem necessary, useful or prudent for the operation of its Air Transportation Business. Title to such personal property shall remain with AIRLINE, subject to the provisions of this Agreement.

M. The construction of modifications, finishes, and improvements in Airline Premises as AIRLINE may deem necessary or prudent for the operation of its Air Transportation Business, subject to the provisions of Section 9.01.

N. AIRLINE shall have the right to ingress to and egress from the Airport and Airline Premises for AIRLINE's officers, employees, agents, and invitees, including passengers, suppliers of materials, furnishers of services, aircraft, equipment, vehicles, machinery and other property. Such right shall be subject to CFR Part 1542, applicable laws, and the AUTHORITY's right in accordance with its applicable law to establish reasonable and nondiscriminatory Rules and Regulations and Operating Directives as set out in Section 18.08 governing (i) the general public, including AIRLINE's passengers, and, (ii) access to non-public areas at the Airport by AIRLINE's employees, suppliers of materials, and furnishers of services; provided, however, any such Rules and Regulations and Operating Directives of AUTHORITY shall not unreasonably interfere with the operation of AIRLINE's Air Transportation Business. AUTHORITY may at any time temporarily or permanently close, re-route, or consent to or request the closing or re-routing of any roadway or access to the Airport, so long as a means of ingress and egress reasonably equivalent is concurrently made available to AIRLINE. AIRLINE hereby releases and discharges AUTHORITY from any and all claims, demands, or causes of action which AIRLINE may now or at any time hereafter have arising or alleged to arise out of such a closing or re-routing.

O. Nothing in this paragraph shall prohibit AIRLINE from (i) providing food and beverages, at AIRLINE's sole cost and expense, or installing or maintaining vending machines in its non-public Exclusive Use Premises for the sole use of AIRLINE's employees, the type, kind, and locations subject to the prior written approval of the Executive Director and (ii) providing under a separate agreement with AUTHORITY for its own flight kitchen for catering services to its passengers and crews for consumption aboard aircraft or (iii) from entering into a separate agreement for the sale of food and beverage in a "VIP room" or similar private club at the Airport.

P. The rights and privileges granted to AIRLINE pursuant to this Article 5 may be exercised on behalf of AIRLINE by other Signatory Airlines or contractors authorized by AUTHORITY to provide such services at the Airport, subject to all laws, rules, regulations, fees and charges and Article 7 and Article 15 as may be applicable to the activities undertaken.

Q. AIRLINE may exercise on behalf of any other Air Transportation Company having an operating agreement or permit with AUTHORITY any of the rights granted AIRLINE herein, so long as AIRLINE is concurrently exercising those same rights in the operation of AIRLINE's own Air Transportation Business at the Airport, subject to the provisions of Article 7, Article 15, and other provisions of this Agreement.

5.02 Exclusions and Reservations.

A. Nothing in this Article 5 shall be construed as authorizing AIRLINE to conduct any business separate and apart from the conduct of its Air Transportation Business.

B. AIRLINE shall not knowingly interfere or permit interference with the use, operation, or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at the Airport.

C. As soon as possible after release from proper authorities, AIRLINE shall remove any of its disabled aircraft from the Airfield or Terminal Aircraft Aprons, shall place any such disabled aircraft only in such storage areas as may be reasonably designated by the Executive Director, and shall store such disabled aircraft only upon such terms and conditions as may be reasonably established by AUTHORITY; provided, however, AIRLINE shall be requested to remove such disabled aircraft from the Terminal Aircraft Apron(s) only if deemed necessary in accordance with Article 16. In the event AIRLINE shall fail to remove any of its disabled aircraft as expeditiously as possible, AUTHORITY may, but shall not be obligated to, cause the removal of such disabled aircraft. AIRLINE shall pay to AUTHORITY, upon receipt of invoice, the costs incurred for such removal plus ten percent (10%). Nonpayment of such invoice shall be deemed a default of this Agreement, pursuant to Section 12.01B.

D. AIRLINE shall not knowingly do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If AIRLINE shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in AUTHORITY's insurance premiums, AIRLINE shall immediately remedy such actions and/or pay the increase in premiums, upon notice from AUTHORITY to do so.

E. AIRLINE shall not maintain or operate in the Terminal or elsewhere at the Airport a cafeteria, restaurant, bar, or cocktail lounge for the purpose of selling food and beverages to the public or to AIRLINE's employees and passengers, except as may be permitted under 5.01O, above.

F. AUTHORITY may, at its sole option, install or cause to be installed advertising and revenue generating devices, including vending machines, in Preferential Use Premises, Joint Use Premises, or Common Use Premises provided, however, that such installations shall not unreasonably interfere with AIRLINE's operations authorized hereunder or substantially diminish the square footage contained in Airline Premises. AUTHORITY may also, at its sole option, install pay telephones in any part of the Terminal not exclusively leased to AIRLINE. AUTHORITY shall be entitled to reasonable access upon Airline Premises to install or service such telephones and devices. Income generated by such telephones and devices shall be accounted for in the same manner as other non-airline revenues of the Airport System.

G. The rights and privileges granted AIRLINE pursuant to this Article 5 shall be subject to any and all reasonable and nondiscriminatory Rules and Regulations and Operating Directives established by AUTHORITY, and provided to AIRLINE, as the same may be amended from time to time, and to the provisions of Article 7.

H. AIRLINE will ensure that its employees are properly trained in the operation and use, including safety measures, of AUTHORITY-owned loading bridges, preconditioned air units, ground power units, or any other tenant equipment utilized by AIRLINE.

I. AIRLINE will also ensure that employees operating or using AUTHORITY's baggage handling system have received AUTHORITY-conducted training and have been issued AUTHORITY certification for the operation and use thereof. Such certification will at all times be displayed on the respective employee's airport identification badge or in such fashion as the AUTHORITY may require.

J. Any and all rights and privileges not specifically granted to AIRLINE for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to AUTHORITY.

ARTICLE 6: OPERATION AND MAINTENANCE OF THE AIRPORT

6.01 Designation of Operation and Maintenance Responsibilities. In addition to the obligations of AIRLINE and AUTHORITY set forth in this Article 6, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in Exhibit D, attached hereto and made a part hereof.

6.02 AUTHORITY Obligations.

A. AUTHORITY shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a first class manner consistent with airports of similar size with qualified personnel and keep the Airport in an orderly, clean, neat and sanitary condition, and good repair, unless such maintenance, operation, or repair shall be AIRLINE's obligation pursuant to Section 6.03 and Exhibit D.

B. AUTHORITY shall, to the extent it is legally able so to do, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by AIRLINE.

C. AUTHORITY shall not be liable to AIRLINE for temporary failure to furnish all or any of such services to be provided in accordance with this Section 6.02 and Exhibit D when such failure is due to mechanical breakdown or loss of electrical power not caused by AUTHORITY's negligence or any other cause beyond the reasonable control of AUTHORITY.

D. AUTHORITY shall maintain (i) loading bridges owned by AUTHORITY; (ii) preconditioned air systems owned by AUTHORITY; (iii) associated aircraft ground power units owned by AUTHORITY; (iv) potable water cabinets owned by AUTHORITY, provided however that AIRLINE shall be responsible for maintaining water hoses associated with the potable water cabinets; (v) baggage conveyors owned and installed by AUTHORITY ; (vi) lightning detection systems; and (vii) other systems that may be acquired by AUTHORITY in the future.

E. AUTHORITY shall, in the operation of the Airport, comply with all local, state and federal laws, rules and regulations.

6.03 AIRLINE Obligations.

A. AIRLINE shall, at all times, preserve and keep Airline Premises in an orderly, clean, neat, and sanitary condition, free from trash and debris resulting from AIRLINE's operations, provided, however, this requirement shall not be construed to mean AIRLINE shall have janitorial responsibilities designated to be those of AUTHORITY pursuant to Exhibit D.

B. AIRLINE shall keep, at its own expense, its preferentially assigned Terminal Aircraft Aprons free of fuel, oil, debris, and other foreign objects.

C. AIRLINE shall operate and maintain at its own expense any improvements and/or equipment installed by AIRLINE for the exclusive use of AIRLINE.

D. Should AIRLINE fail to perform its material obligations hereunder, AUTHORITY shall have the right to enter the Airline Premises and perform such activities; provided, however, other than in a case of emergency, AUTHORITY shall give AIRLINE reasonable advance written notice of non-compliance, not to exceed ten (10) days, prior to the exercise of this right. If such right is exercised, AIRLINE shall pay AUTHORITY, upon receipt of invoice, the cost of such services plus ten percent (10%). Nonpayment of such invoice shall be deemed a default of this Agreement, pursuant to Section 12.01B.

ARTICLE 7: RENTALS, FEES, AND CHARGES

AIRLINE shall pay AUTHORITY rentals for use of Airline Premises, and fees and charges for the other rights, licenses, and privileges granted hereunder during the Term of this Agreement. The rentals, fees, and charges payable by all Signatory Airlines for the Airfield and, with respect to the Terminal, the rentals, fees, and charges payable by Signatory Airlines leasing space in the Terminal, shall be equal to the Signatory Airlines' share of the Net Requirement in each respective area of the Airport, all as set forth in Exhibit F.

7.01 Landing Fees. AIRLINE shall pay monthly to AUTHORITY fees for Revenue Landings for the preceding month. AIRLINE's Landing Fees shall be determined as the product of the Landing Fee rate for the period, calculated in accordance with Exhibit F, attached hereto, and AIRLINE's total landed weight for the month. AIRLINE's landed weight for the month shall be determined as the sum of the products obtained by multiplying the Maximum Gross Landed Weight of each type of AIRLINE's aircraft by the number of Revenue Landings of each said aircraft during such month.

7.02 Terminal Rentals.

A. For the Term of this Agreement, AIRLINE's Terminal rentals shall be determined as the sum of AIRLINE's rentals for Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises. AIRLINE's rental payment for Exclusive Use Premises and Preferential Use Premises shall be determined as the sum of the products obtained by multiplying the rental rate for the period, calculated in accordance with Exhibit F, by the amount of the corresponding type of space leased by AIRLINE as Exclusive Use Premises and Preferential Use Premises as set forth in Exhibits B and C.

B. Total Terminal rentals for Joint Use Premises shall be calculated as the product of the appropriate differential Terminal rental rates for the period calculated in accordance with Exhibit F, and the amount of each category of Joint Use Premises. AIRLINE's share of the total Terminal rentals due each month for Joint Use Premises shall be determined in accordance with the Joint Use Formula.

C. For inclusion in the Joint Use Formula, AIRLINE shall include in its monthly report of Enplaned Passengers and Deplaned Passengers the total number of Enplaned Passengers and Deplaned Passengers handled or otherwise accommodated by AIRLINE for other Air Transportation Companies not having an agreement with AUTHORITY that provides for the direct payment to AUTHORITY of appropriate charges for the use of Joint Use Premises.

7.03 Extraordinary Service Charges. Throughout the Term of the Agreement, AIRLINE shall pay extraordinary service charges, if applicable as evidenced by extraordinary service charge authorizations executed by AIRLINE for such extraordinary additional equipment and services provided by AUTHORITY for AIRLINE's use. AIRLINE's charges for AUTHORITY purchased Terminal equipment shall be as set forth in a separate agreement with AUTHORITY.

7.04 Aircraft Parking Charges. AIRLINE shall pay reasonable and non-discriminatory aircraft parking charges as set forth in Exhibit F for aircraft remotely parked for extended periods of time on areas other than the Terminal Aircraft Aprons.

7.05 Other Fees and Charges.

A. AUTHORITY expressly reserves the right to assess and collect the following:

(1) Reasonable and non-discriminatory fees for services provided by AIRLINE for any other Air Transportation Companies, or for AIRLINE by any other Air Transportation Companies, if such services or concessions would otherwise be available from a concessionaire, licensee, or permittee of AUTHORITY. Provided, however, if such other Air Transportation Company is an Affiliate of AIRLINE, such fees for services shall not apply. Fees for the provision of such services are identified in the AUTHORITY's Ground Handling Agreements for service providers.

(2) Reasonable and non-discriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by AUTHORITY or its contractors and utilized by AIRLINE, including, but not limited to, special maintenance of Airline Premises, equipment, vehicle storage and service areas, Federal Inspection Services (FIS) facility fees, and remote ramp aircraft parking fee.

(3) Pro rata shares of any charges for the provision of any services or facilities which AUTHORITY is required or mandated to provide by any governmental entity (other than AUTHORITY acting within its proprietary capacity) having jurisdiction over the Airport.

B. AUTHORITY reserves the right to charge AIRLINE or its employees a reasonable and non-

discriminatory fee based on AUTHORITY's cost of providing services and facilities for the employee parking area(s) provided at the Airport. Should AUTHORITY elect to charge such a fee for employee parking, it may do so by first notifying AIRLINE in writing and without formal amendment to this Agreement.

C. AIRLINE shall pay all applicable sales, use, intangible and ad valorem taxes of any kind, assessed against Airline Premises, the real property and any improvements thereto or leasehold estate created herein, or which result from AIRLINE's occupancy or use of Airline Premises whether levied against AIRLINE or AUTHORITY. AIRLINE shall also pay any other taxes or assessments against Airline Premises or leasehold estate created herein. AIRLINE may reserve the right to contest such taxes and withhold payment of such taxes upon written notice to AUTHORITY of its intent to do so, so long as the nonpayment of such taxes does not result in a lien against the real property or any improvements thereon or a direct liability on the part of AUTHORITY. AUTHORITY agrees to immediately forward to AIRLINE any notices of such taxes and assessments due upon receipt of same.

D. AIRLINE shall pay Extraordinary Coverage Protection payments in the rates for rentals, fees, and charges at the Airport in any Fiscal Year in which the amount of Revenues less O&M Expenses and the O&M Reserve Requirement is projected to be less than one hundred twenty-five percent (125%) of the Debt Service requirement. Any amounts which must be collected for such Extraordinary Coverage Protection payments will be allocated to the Airfield Cost Center and the Terminal Cost Center on the basis of the Net Requirement of the Airfield Cost Center and the Terminal Cost Center.

7.06 Information to be Supplied by AIRLINE.

A. Not later than ten (10) days after the end of each month, AIRLINE shall file with AUTHORITY separate written reports on forms provided by AUTHORITY and included as samples in Exhibit E, attached hereto, for activity conducted by AIRLINE during said month, and for activity handled by AIRLINE for each Air Transportation Company not having an agreement with AUTHORITY providing for its own submission of activity data to AUTHORITY. Such activity reporting shall include, but not be limited to operations, revenue and non-revenue Enplaned Passengers, Deplaned Passengers, connecting passengers, through-passengers, and pounds of cargo, mail, and express shipments.

B. AUTHORITY shall have the right to rely on said activity reports in determining rentals and charges due hereunder. AIRLINE shall have full responsibility for the accuracy of said reports.

Payment deficiencies due to incomplete or inaccurate activity reports shall be subject to interest charges as set forth in Paragraph 7.07D.

C. AIRLINE shall at all times maintain and keep records reflecting the activity statistics of AIRLINE's activities at the Airport to be reported pursuant to Paragraph 7.06A. Such records shall be retained by AIRLINE for a period of three (3) years subsequent to the activities reported therein, or such other retention period as set forth in FAR Part 249, and upon prior written notice to AIRLINE shall be made available at Ft. Myers, Florida for audit and/or examination by AUTHORITY or its duly authorized representative during all normal business hours. AIRLINE shall produce such books and records at Ft. Myers, Florida within thirty (30) calendar days of AUTHORITY's notice to do so or pay all reasonable expenses, including but not limited to transportation, food, and lodging, necessary for an auditor selected by AUTHORITY to audit said books and records.

D. The cost of audit, with the exception of the aforementioned expenses, shall be borne by AUTHORITY; provided, however, the total cost of said audit shall be borne by AIRLINE if either or both of the following conditions exist:

- (1) The audit reveals an underpayment of more than ten percent (10%) by category of rentals, fees, and charges due on an annual basis hereunder, as determined by said audit;
- (2) AIRLINE has failed to maintain true and complete records in accordance with Paragraph 7.06C.

7.07 Payments.

A. Payments of one-twelfth (1/12) of the total annual rentals for AIRLINE's Exclusive Use Premises, and Preferential Use Premises shall be due in advance, without demand or invoice, on the first day of each month. Said rentals and charges shall be deemed delinquent if payment is not received by the tenth (10) day of the month.

B. Payment of AIRLINE's Landing Fees shall be due fifteen (15) days from AUTHORITY's issuance of invoice, and shall be deemed delinquent if not received within ten (10) days of the due date.

C. Payment for all other fees and charges due hereunder, shall be due as of the due date stated on

AUTHORITY's invoice. Said fees and charges shall be deemed delinquent if payment is not received within thirty (30) days of the stated date of such invoice.

D. AUTHORITY shall provide notice of any and all payment delinquencies, including payments of any deficiencies which may be due as a result of AUTHORITY's estimates of activity pursuant to Paragraph E below, or due to an audit performed pursuant to Paragraph 7.06C, herein; provided, however, interest at the rate of eighteen percent (18%) per annum shall accrue against any and all delinquent payment(s) from the due date until the date payments are received by AUTHORITY. This provision shall not preclude AUTHORITY from canceling this Agreement for default in the payment of rentals, fees, or charges, as provided for in Section 12.01B herein, or from exercising any other rights contained herein or provided by law.

E. In the event AIRLINE fails to submit its monthly activity reports as required in Paragraph 7.06A, AUTHORITY shall estimate the rentals, fees, and charges based upon the highest month of the previous twelve (12) month's activity reported by AIRLINE and issue an invoice to AIRLINE for same. If no activity data is available, AUTHORITY shall reasonably estimate such activity and invoice AIRLINE for same. AIRLINE shall be liable for any deficiencies in payments based on estimates made under this provision; payment for said deficiencies shall be deemed due as of the date such rental fee or charge was due and payable.

F. In the event AIRLINE's obligations with respect to Airline Premises or rights, licenses, or privileges granted hereunder shall commence or terminate on any date other than the first or last day of the month, AIRLINE's rentals, fees, and charges shall be prorated on the basis of the number of days such premises, facilities, rights, licenses, services, or privileges were enjoyed during that month.

G. All payments due and payable hereunder shall be paid in lawful money of the United States of America, without set off, by check made payable to AUTHORITY and delivered to:

Via Wire Transfer

Bank of America
13099 US 41 SE
Fort Myers, FL 33907
ABA #063100277
Account Name: Lee County BOCC-Airport Revenue
Account # 005500504580

Via U.S. Mail

Lee County Port Authority
11000 Terminal Access Road
Suite 8671
Fort Myers, FL 33913-8213

7.08 Security for Performance.

A. Unless AIRLINE has provided regularly scheduled flights to and from the Airport during the eighteen (18) months prior to the Effective Date of this Agreement, as defined in Article 2, without the occurrence of any act or omission that would have been an event enumerated in Section 12.01 of this Agreement, AIRLINE shall provide AUTHORITY on the Effective Date of this Agreement, as defined in Article 2, with a contract bond, irrevocable letter of credit or other similar security acceptable to AUTHORITY (“Contract Security”) in an amount equal to the estimate of three (3) months’ rentals, fees and charges payable by AIRLINE.. AIRLINE shall be obligated to maintain such Contract Security in effect until the expiration of eighteen (18) consecutive months during which period AIRLINE commits no event enumerated in Section 12.01 of this Agreement. Such Contract Security shall be in a form and with a company reasonably acceptable to AUTHORITY and licensed to do business in the State of Florida. In the event that any such Contract Security shall be for a period less than the full period required by this Paragraph 7.08A or if Contract Security shall be canceled, AIRLINE shall provide a renewal or replacement Contract Security for the remaining required period at least sixty (60) days prior to the date of such expiration or cancellation.

B. In the event AUTHORITY is required to draw down or collect against AIRLINE’s Contract Security for any reason, AIRLINE shall, within ten (10) business days after AUTHORITY’s written demand, take such action as may be necessary to replenish the existing Contract Security to its original amount (three months’ estimated rentals, fees, and charges) or to provide additional or supplemental Contract Security from another source so that the aggregate of all Contract Security is equal to three months’ estimated rentals, fees, and charges payable by AIRLINE pursuant to this Article 7.

C. Notwithstanding the above Paragraph 7.08A, AUTHORITY shall have the right in its sole discretion to waive such Contract Security requirements for a Signatory Airline which has not provided regularly scheduled flights at and from the Airport during the eighteen (18) months prior to the Effective Date of its Signatory Airline Agreement. Any such waiver by AUTHORITY shall be conditioned upon said Signatory Airline having provided regularly scheduled flights at six (6) other airports with activity levels and characteristics similar to the Airport during the most recent eighteen (18) month period, without committing any material default under the terms of the respective lease and use agreements at each of the six (6) facilities, and without a pattern of untimely payments for rentals, fees and charges. The burden shall be on AIRLINE to demonstrate to AUTHORITY its compliance with these

requirements at the six (6) other airports.

D. In addition to the foregoing, upon the occurrence of any AIRLINE act or omission that is an event enumerated in Section 12.01, or upon AIRLINE's election to assume this Agreement under Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984 or any successor statute, as such may be amended, supplemented, or replaced, AUTHORITY, by written notice to AIRLINE given at any time within ninety (90) days of the date such event becomes known to AUTHORITY, may impose or reimpose the requirements of Paragraph 7.08A on AIRLINE. In such event, AIRLINE shall provide AUTHORITY with the required Contract Security within ten (10) days from its receipt of such written notice and shall thereafter maintain such Contract Security in effect until the expiration of a period of eighteen (18) consecutive months during which AIRLINE commits no additional event enumerated in Section 12.01 or the termination of bankruptcy proceedings, whichever is later.

E. If AIRLINE shall fail to obtain and/or keep in force such Contract Security required hereunder, such failure shall be grounds for immediate cancellation of this Agreement pursuant to Section 12.01. AUTHORITY'S rights under this Section 7.08 shall be in addition to all other rights and remedies provided to AUTHORITY under this Agreement.

F. AIRLINE and AUTHORITY agree that this Agreement constitutes an 'executory contract' for the purposes of Section 365 of the United States Bankruptcy Code (Title 11 USC) subject to assumption or rejection, and subject to the terms and conditions of assumption or rejection, as provided in said Section 365. Furthermore, AIRLINE and AUTHORITY agree that any Contract Security provided by AIRLINE are not 'property of the estate' for purposes of Section 541 of the United States Bankruptcy Code (Title 11 USC), it being understood that any Contract Security is property of the third party providing it (subject to AUTHORITY's ability to draw against the Contract Security) and that all PFCs collected by AIRLINE with respect to Enplaned Passengers at the Airport, are property of AUTHORITY.

7.09 No Further Charges. Except as provided in this Agreement, or as may be permitted by any governmental entity (other than AUTHORITY, acting within its proprietary capacity) having jurisdiction over the Airport, no further rentals, fees, or charges shall be charged against or collected from AIRLINE, its passengers, its shippers and receivers of freight, its suppliers of material, its contractors or furnisher of services, by AUTHORITY, acting in its capacity as Airport proprietor, for the premises, facilities, rights, licenses, and privileges granted to AIRLINE herein.

ARTICLE 8: CHANGES IN RATES FOR RENTALS, FEES, AND CHARGES

8.01 Annual Rate Changes.

A. No later than sixty (60) days prior to the end of each Fiscal Year, AUTHORITY shall notify AIRLINE of the proposed schedule of rates for rentals, fees, and charges for the ensuing Fiscal Year. Said rates shall be determined and presented to AIRLINE substantially in conformance with the methods and format set forth in Exhibit F, attached hereto.

B. The Signatory Airlines through its AAC shall have the right to review and comment upon the proposed operating and capital budget. No later than thirty (30) days after the forwarding of the proposed schedule of rates for rentals, fees, and charges, AUTHORITY agrees to meet with the AAC at a mutually convenient time for the purpose of discussing such rentals, fees, and charges. In advance of said meeting, AUTHORITY shall make available to the AAC any reasonably requested additional information relating to the determination of the proposed rates. AUTHORITY agrees to fully consider the comments and recommendations of the Signatory Airlines prior to finalizing its schedule of rates for rentals, fees, and charges for the ensuing Fiscal Year.

C. Following said meeting, and prior to the end of the then current Fiscal Year, AUTHORITY shall notify AIRLINE of the rates for rentals, fees, and charges to be established for the ensuing Fiscal Year.

D. If calculation of the new rates for rentals, fees, and charges is not completed by AUTHORITY and the notice provided in Paragraph 8.01C is not given on or prior to the end of the then current Fiscal Year, the rates for rentals, fees, and charges then in effect shall continue to be paid by AIRLINE until such calculations are concluded and such notice is given. Upon the completion of such calculations and the giving of such notice, AUTHORITY shall determine the difference(s), if any, between the actual rentals, fees, and charges paid by AIRLINE to date for the then current Fiscal Year and the rates for rentals, fees, and charges that would have been paid by AIRLINE if said rates had been in effect beginning on the first day of the Fiscal Year. Said differences shall be applied to the particular rentals, fees, or charges for which a difference(s) in rates resulted in an overpayment or underpayment, and shall be remitted by AIRLINE or credited or refunded by AUTHORITY in the month immediately following the calculation of the new Fiscal Year rates and the giving of written notice to AIRLINE by AUTHORITY.

8.02 Other Rate Changes. Rates for rentals, fees, and charges may be changed at any other time that unaudited monthly AUTHORITY financial data indicates that total rentals, fees, and charges payable pursuant to the then current rate schedules are reasonably estimated and anticipated by AUTHORITY to increase or decrease by more than ten percent (10%) from the total rentals, fees, and charges that would be payable based upon the use of the monthly financial data then available for said Fiscal Year. Rates for rentals, fees, and charges may also be changed whenever required by the terms and provisions of the Bond Resolution; provided, however, that Signatory Airlines' total rentals, fees, and charges payable to AUTHORITY shall be allocated to AIRLINE in accordance with this Agreement.

8.03 Incorporation of Exhibit F. Adjustments to rates for rentals, fees, and charges shall be determined in accordance with Exhibit F and transmitted to AIRLINE without the necessity of formal amendment of this Agreement.

8.04 Settlement. AUTHORITY shall use its best efforts such that within one hundred twenty (120) days following the close of each Fiscal Year, or as soon as unaudited financial data for said Fiscal Year is available, rates for rentals, fees, and charges for the preceding Fiscal Year shall be recalculated using unaudited financial data and the methods set forth in Exhibit F. AIRLINE shall have reasonable access to the records of AUTHORITY, and shall have the right to audit the financial data used in connection with such recalculation. Upon the determination of any difference(s) between the actual rentals, fees, and charges paid by Signatory Airlines during the preceding Fiscal Year and the rentals, fees, and charges that would have been paid by Signatory Airlines using said recalculated rates, AUTHORITY shall, in the event of overpayment, promptly refund to AIRLINE the amount of such overpayment within 30 days, and in the event of underpayment, invoice AIRLINE for the amount of such underpayment. Said invoiced amount shall be due within thirty (30) days of the invoice mailing date.

8.05 Use of Airport Fund. AUTHORITY may use the amounts remaining in the Airport Fund at the end of each Fiscal Year after determination of Revenue Sharing as described in Section 8.06, if available, for the following purposes and in the order of priority as determined by AUTHORITY: (i) for AUTHORITY to satisfy its obligations under the determination of any Settlement pursuant to Section 8.04; (ii) for improvements on, additions to, and acquisitions for the Airport System; (iii) for Debt Service on Bonds; (iv) for the purchase and retirement of Bonds; and (v) for any lawful Airport System Purpose.

8.06 Revenue Sharing. At the end of each Fiscal Year, after determination of Settlement in Section

8.04, AUTHORITY will share with the passenger Signatory Airlines a portion of net remaining Revenues, if available, calculated in accordance with Exhibit F. Availability of revenue sharing will be based on AUTHORITY's ability to satisfy its obligations and meet all Bond Resolution requirements in each Fiscal Year.

8.07 AUTHORITY Covenants.

A. AUTHORITY covenants that for purposes of assigning and allocating costs, it shall utilize generally accepted accounting practices utilized for airports operating as an enterprise fund, and include only those charges properly attributable to the Airport System.

B. AUTHORITY shall operate the Airport System in a manner so as to produce Revenues from concessionaires, tenants, and other users of the Airport System of a nature and amount which would be produced by a reasonably prudent operator of an airport system of substantially similar size, use, and activity, with due regard for the interests of the public, subject to existing leases.

C. AUTHORITY shall use Revenues of the Airport System in accordance with the provisions of the Bond Resolution and applicable law.

D. AUTHORITY, to the extent authorized by the laws governing AUTHORITY along with all applicable tax laws, will use its best efforts to use tax-exempt sources for financing the Airport System.

E. All rates and charges shall be at reasonable and non-discriminatory rates based on AUTHORITY's cost of the facility or service provided to and used by AIRLINE.

F. Indirect and general administrative costs shall be allocated in a reasonable, transparent cost allocation formula calculated consistently for all Cost Centers of the AUTHORITY.

ARTICLE 9: ALTERATIONS AND IMPROVEMENTS BY AIRLINE

9.01 Alterations and Improvements by AIRLINE

A. In accordance with Paragraph 5.01M AIRLINE may construct and install, at AIRLINE's sole expense, such improvements in its Exclusive Use Premises as AIRLINE deems to be necessary for its operations; provided, however, that the plans and specifications, location, and construction schedule for such improvements shall be approved by the Executive Director in writing prior to the commencement of any and all such construction or installation and that AIRLINE complies with the requirements of AUTHORITY's Leasehold Development Standards. Said approval shall not be unreasonably withheld, conditioned or delayed. Provided further, that no reduction or abatement of rentals, fees, and charges shall be allowed for any interference with AIRLINE's operations by such construction.

B. Prior to the commencement of any improvements greater than \$200,000, AUTHORITY shall require that AIRLINE obtain, or cause to be obtained, payment and performance bonds or other security that meets the requirements of Section 255.05, Florida Statutes in a sum equal to the full amount of the construction contract awarded by AIRLINE for the improvements. Said bond shall name AUTHORITY as an obligee hereunder and shall be drawn in a form and from such company acceptable to AUTHORITY and licensed to do business in the State of Florida; shall guarantee the faithful performance of necessary construction and completion of improvements and payment of all persons who furnish labor, services, or materials for the prosecution of the work; in accordance with approved final plans and detailed specifications; and shall protect AUTHORITY against any losses and liability, damages, expenses, claims, and judgments caused by or resulting from any failure to perform completely the work described. The payment bond shall be provided in the sum equal to the full amount of the construction contract awarded by AIRLINE for the improvements. Said bond shall name AUTHORITY as an obligee thereunder and shall guarantee payment of all wages for labor and services engaged, and of all bills for materials, supplies, and equipment used in the performance of said construction contract. Any work associated with such construction or installation shall not unreasonably interfere with the operation of the Airport, or otherwise unreasonably interfere with the permitted activities of other Terminal tenants and users. Upon completion of approved construction and within sixty (60) days of AIRLINE's receipt of a certificate of occupancy, a complete set of as-built drawings shall be delivered to the Executive Director in a media type and format acceptable for the permanent record of AUTHORITY.

C. AIRLINE shall furnish or require contractors to furnish satisfactory evidence of statutory

worker's compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance, on a builder's risk form with the interest of AUTHORITY endorsed thereon, in such amounts and in such manner as AUTHORITY may reasonably require. AUTHORITY may require additional insurance for any alterations or improvements approved hereunder, in such limits as AUTHORITY reasonably determines to be necessary.

D. Any construction or installation shall be at the sole risk of AIRLINE and shall be in accordance with the Leasehold Development Standards and all applicable state and local codes and laws and subject to inspection by the Executive Director.

E. All improvements made to Airline Premises and additions and alterations thereto made by AIRLINE, except those financed by AUTHORITY, shall be and remain the property of AIRLINE until expiration of the Term of this Agreement. Upon termination or cancellation of this Agreement, said additions and alterations shall become the property of AUTHORITY or at AUTHORITY's option removed by AIRLINE; provided, however, that any trade fixtures, signs, equipment and other movable personal property of AIRLINE not permanently affixed to Airline Premises shall remain the property of AIRLINE, subject to the terms of Article 14.

ARTICLE 10: DAMAGE OR DESTRUCTION

10.01 Partial Damage. If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be partially damaged by fire or other casualty, but said circumstances do not render Airline Premises untenable as reasonably determined by AUTHORITY, the same shall be repaired to usable condition with due diligence by AUTHORITY as hereinafter provided. No abatement of rentals shall accrue to AIRLINE so long as Airline Premises remain tenantable.

10.02 Substantial Damage. If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be so extensively damaged by fire or other casualty as to render any portion of said Airline Premises untenable but capable of being repaired, as reasonably determined by AUTHORITY, the same shall be repaired to usable condition with due diligence by AUTHORITY as hereinafter provided. If such repairs have not been commenced by AUTHORITY within 90 days of such damage, AIRLINE shall have the option to terminate its agreement related to those facilities so damaged. In such case, the rentals payable hereunder with respect to AIRLINE's affected Airline Premises shall be paid up to the time of such damage and shall thereafter be abated equitably in proportion as the part of the area rendered untenable bears to total Airline Premises until such time as such affected Airline Premises shall be restored adequately for AIRLINE's use. AUTHORITY shall use its best efforts to provide AIRLINE with alternate facilities acceptable to AIRLINE to continue its operation while repairs are being completed, at a rental rate not to exceed that provided for in this Agreement for comparable space.

10.03 Destruction.

A. If any part of Airline Premises, or adjacent facilities directly and substantially affecting the use of Airline Premises, shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of said Airline Premises not economically feasible to repair, as reasonably determined by AUTHORITY, AUTHORITY shall notify AIRLINE within a period of forty-five (45) days after the date of such damage of its decision whether to reconstruct or replace said space; provided, however, AUTHORITY shall be under no obligation to replace or reconstruct such premises. The rentals payable hereunder with respect to affected Airline Premises shall be paid up to the time of such damage and thereafter shall abate until such time as replacement or reconstructed space becomes available for use by AIRLINE.

B. In the event AUTHORITY elects to reconstruct or replace affected Airline Premises, AUTHORITY shall use its best efforts to provide AIRLINE with alternate facilities reasonably acceptable to AIRLINE to continue its operation while reconstruction or replacement is being completed at a rental rate not to exceed that provided for in this Agreement for comparable space.

C. In the event AUTHORITY elects to not reconstruct or replace affected Airline Premises, the agreement for the affected premises shall be terminated and AUTHORITY shall meet and consult with AIRLINE on ways and means to permanently provide AIRLINE with adequate replacement space for affected Airline Premises. In such event, AUTHORITY agrees to amend this Agreement to reflect related additions and deletions to Airline Premises.

10.04 Damage Caused By AIRLINE. Notwithstanding the provisions of this Article 10, in the event that due to the negligence or willful act or omission of AIRLINE, its employees, its agents, or licensees, Airline Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Airline Premises. To the extent that the costs of repairs shall exceed the amount of any insurance proceeds payable to AUTHORITY by reason of such damage or destruction, AIRLINE shall pay the amount of such additional costs to AUTHORITY.

10.05 AUTHORITY's Responsibilities. AUTHORITY shall maintain adequate, reasonable and customary levels of insurance with no less restrictive coverage than that provided by standard extended coverage endorsements on the "all risk" form, for the full replacement costs thereof as determined from time to time by the AUTHORITY; provided, however, that AUTHORITY's obligations to repair, reconstruct, or replace affected premises under the provisions of this Article 10 shall in any event be limited to restoring affected Airline Premises to substantially the same condition that existed at the date of damage or destruction, including any subsequent improvements made by AUTHORITY, and shall further be limited to the extent of insurance proceeds and other funds available to AUTHORITY for such repair, reconstruction, or replacement; provided further that AUTHORITY shall in no way be responsible for the restoration or replacement of any equipment, furnishings, property, real improvements, signs, or other items installed and/or owned by AIRLINE in accordance with this Agreement, unless such damage is caused by negligence or willful act or omission of AUTHORITY, its officials, agents, or employees acting within the course or scope of their employment.

ARTICLE 11: INDEMNIFICATION AND INSURANCE

11.01 Indemnification. Except where, and to the extent, it is caused by the negligence of the agents, employees, contractors, officers or board of the AUTHORITY, AIRLINE agrees to protect, defend, reimburse, indemnify and hold AUTHORITY and Lee County, Florida and their respective agents, employees, board members and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including actually incurred reasonable attorney's fees) and causes of action of every kind and character, whether or not meritorious, against or from AUTHORITY by reason of any damage to property (or the environment, including any contamination of Airport property such as the soil or storm water by fuel, gas, chemicals or other substances deemed by the Environmental Protection Agency (EPA) to be environmental contaminants at the time this Agreement is executed or as may be redefined by the appropriate regulatory agencies in the future), or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with AIRLINE's performance under this Agreement, AIRLINE's use or occupancy of the Airline Premises, AIRLINE's negligent acts, omissions or operations hereunder or the performance, non-performance or purported performance of AIRLINE or any breach of the terms of this Agreement by AIRLINE. Provided, however, that upon the filing by anyone of a claim with the AUTHORITY for damages arising out of incidents for which AIRLINE herein agrees to indemnify and hold the AUTHORITY harmless, the AUTHORITY shall promptly notify AIRLINE of such claim and, in the event that AIRLINE does not settle or compromise such claim, then AIRLINE shall undertake the legal defense of such claim both on behalf of AIRLINE and on behalf of the AUTHORITY. It is specifically agreed, however, that the AUTHORITY, at its option and at its own expense, may participate in the legal defense of such claim. Any final judgment rendered against the AUTHORITY for any cause for which AIRLINE is liable hereunder shall be conclusive against AIRLINE as to liability and amount upon the expiration of the time for appeal therefrom. AIRLINE recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges that it is given in acknowledgement of the good and valuable consideration provided by AUTHORITY in support of this indemnification in accordance with laws of the State of Florida. This clause shall survive the termination of this Agreement as to claims arising during the Term thereof. Compliance with the insurance requirements of this Article 11 shall not relieve AIRLINE of its liability or obligation to indemnify AUTHORITY as set forth in this Article 11.

11.02 Insurance.

A. During the Term of this Agreement, AIRLINE shall provide, pay for and maintain with companies, reasonably satisfactory to AUTHORITY, the types of insurance described herein. All

insurance shall be issued by responsible insurance companies eligible to do business in the State of Florida.

B. All liability policies shall provide that AUTHORITY is an Additional Insured to the extent of AIRLINE's contractual obligations hereunder. The insurance coverage and limits required shall be evidenced by properly executed certificates of insurance. These certificates shall be signed by the authorized representative of the insurance company shown on the certificate. In addition, certified, true, and exact copies of all insurance policies shall be made available to AUTHORITY, if requested, on a timely basis. All AUTHORITY travel expenses associated with traveling to AIRLINE's headquarters to review such policies shall be reimbursed by AIRLINE. The required policies of insurance shall be construed in accordance with the laws of the State of Florida.

C. If at any time AUTHORITY requests a written statement from the insurance company as to any impairments to the aggregate limit, AIRLINE shall promptly authorize and have delivered such statement to AUTHORITY. AIRLINE authorizes AUTHORITY to confirm with AIRLINE's insurance agents, brokers and insurance companies all information furnished AUTHORITY, as to its compliance with its insurance requirements. Renewal Certificates of Insurance must be provided to AUTHORITY as soon as practical but in every instance prior to expiration of current coverages.

D. All required insurance coverages of AIRLINE shall be primary to any insurance or self-insurance program of AUTHORITY.

E. The acceptance of delivery to AUTHORITY of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or acceptance by AUTHORITY that the insurance requirements in this Agreement have been met.

F. No operations shall either commence or continue at the Airport unless and until the required certificates of insurance are in effect and approved by AUTHORITY.

G. The insurance coverages and limits required of AIRLINE under this Agreement are designed to meet the minimum requirements of AUTHORITY. They are not designed as a recommended insurance program for AIRLINE. AIRLINE is responsible for insuring its real and personal property located at the Airport. AIRLINE, alone, shall be responsible for the sufficiency of its own insurance program. Should AIRLINE have any question concerning its exposures to loss under this Agreement, or the possible

insurance coverages needed therefor, it should seek professional advice.

H. AIRLINE and AUTHORITY understand and agree that the limits of the insurance herein required may from time to time become inadequate, and AIRLINE agrees that it will increase such limits upon receipt of written notice. AIRLINE shall furnish AUTHORITY, within sixty (60) days of the effective date thereof, a certificate of insurance evidencing such insurance is in force.

I. AIRLINE or AIRLINE's insurance companies or their authorized representative shall give AUTHORITY sixty (60) days prior written notice by registered or certificated mail of any cancellation, intent not to renew, or material reduction in any policy's coverage, except in the application of the Aggregate Limits Provisions. In the event of a reduction to the Aggregate Limit, it is agreed that immediate steps will be taken to have it reinstated. Said notices shall be sent pursuant to Section 18.22 of this Agreement.

J. Should at any time AIRLINE not, in the opinion of AUTHORITY, provide or maintain the insurance coverages required in this Agreement, AIRLINE must discontinue operations at the Airport, and AUTHORITY may terminate or suspend this Agreement, in accordance with Article 12.01 B(3).

K. The amounts and types of insurance shall conform to the following minimum requirements with policies, forms and endorsements that are comparable to Insurance Service Office (ISO) requirements. Notwithstanding the foregoing, at a minimum, the wording of all policies, forms and endorsements must be reasonably acceptable to AUTHORITY.

(1) Workers Compensation and Employer's Liability Insurance shall be maintained in force by AIRLINE during the Term of this Agreement for all employees engaged in the operations under this Agreement. The limits of coverage shall not be less than:

Workers' Compensation	Florida Statutory
Employer's Liability	\$1,000,000 Limit Each Accident
	\$1,000,000 Limit Disease Aggregate
	\$1,000,000 Limit Disease Each Employee

(2) Airport Liability Insurance shall be maintained by AIRLINE for the life of this

Agreement. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Products and completed Operations Coverage and shall not exclude the (XCU) Explosion, Collapse and Underground Property Damage Liability Coverage. Coverage shall be applicable to the operation of all mobile and ground equipment at the Airport. The limits of coverage shall not be less than:

Airlines Operating Aircraft with fifty (50) or more seats:

Bodily & Personal Injury	\$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate

Airlines Operating Aircraft with less than fifty (50) seats:

Bodily & Personal Injury	\$50,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate

(3) Aircraft Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement for all owned, non-owned, leased or hired aircraft, including passenger coverage. The limits of coverage shall not be less than:

Bodily & Personal Injury	\$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate

(4) Business Automobile Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles. The limits of coverage shall not be less than:

Bodily & Personal Injury	\$5,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate

(5) Umbrella Liability Insurance or Excess Liability Insurance may be used to reach the limits of liability required for the Airport Liability Policy, Aircraft Liability and the Business Automobile Policy. The limits of coverage shall not be less than:

Umbrella or Excess Liability Policy	\$100,000,000 Combined Single Limit
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Each Occurrence & Aggregate-Specific
for this Agreement

\$200,000,000 Combined Single Limit
Each Occurrence & Aggregate-Not Specific
for this Agreement

Primary Liability Limits for the underlying Airport General Liability Coverage:

Bodily & Personal Injury
& Property Damage Liability

\$10,000,000 Combined Single Limit
Each Occurrence & Aggregate

ARTICLE 12: CANCELLATION BY AUTHORITY

12.01 Events of Default. The events described below shall be deemed events of default by AIRLINE hereunder:

A. Upon the occurrence of the following event of default, AUTHORITY shall immediately give written notice of default.

The conduct of any business or performance of any acts at the Airport not specifically authorized herein or by other agreements between AUTHORITY and AIRLINE, and said business or acts do not cease within thirty (30) days of receipt of AUTHORITY's written notice to cease said business or acts.

B. Upon the occurrence of any one of the following events of default, AUTHORITY shall immediately give written notice of default. Upon receiving notice of any default listed in this Paragraph 12.01B, AIRLINE shall cure the default within thirty (30) days of receiving the notice.

(1) The failure by AIRLINE to pay any part of the rentals, fees, and charges due hereunder and the continued failure to pay said amounts in full within thirty (30) days of AUTHORITY's written notice of payments past due. Provided, however, if a dispute arises between AUTHORITY and AIRLINE with respect to any obligation or alleged obligation of AIRLINE to make payments to AUTHORITY, payments under protest by AIRLINE of the amount due shall not waive any of AIRLINE'S rights to contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the protested payment shall not be due, then AUTHORITY shall promptly reimburse AIRLINE any amount determined as not due plus interest on such amount at one and one-half percent (1-1/2%) per month.

(2) The failure by AIRLINE to provide and keep in force Contract Security in accordance with Section 7.08.

(3) The failure by AIRLINE to maintain and keep in force insurance coverage in accordance with this Agreement. Notwithstanding any other provisions of this Paragraph 12.01B, AIRLINE must immediately discontinue operations at the Airport in accordance with

Paragraphs 11.02F and 11.02J until such time as insurance coverage is in force.

C. Upon the occurrence of any one of the following events of default, AUTHORITY may give written notice of default. Upon receiving notice of any default listed in this Paragraph 12.01C, AIRLINE shall: (1) cure the default within thirty (30) days of receiving the notice; or (2) if by reason of the nature of such default, the same cannot be remedied within thirty (30) days, AIRLINE shall commence the remedying of such default within said thirty (30) days following such written notice, and having so commenced, continue with diligence the curing thereof until the default is remedied. AIRLINE shall have the burden of proof to demonstrate (i) that the default cannot be cured within thirty (30) days, and (ii) that it is proceeding with diligence to cure said default, and that such default will be cured within a reasonable period of time.

- (1) The failure by AIRLINE to remit PFCs in accordance with Section 18.03.
- (2) The appointment of a trustee, custodian, or receiver of all or a substantial portion of AIRLINE's assets.
- (3) The divestiture of AIRLINE's estate herein by operation of law, by dissolution, or by liquidation, (not including a merger or sale of assets).
- (4) The insolvency of AIRLINE; or if AIRLINE shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, or shall seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by AIRLINE of a voluntary petition of bankruptcy or the institution of proceedings against AIRLINE the adjudication of AIRLINE as a bankrupt pursuant thereto.
- (5) The abandonment by AIRLINE of the Airline Premises, or its conduct of business at the Airport; and, in this connection, suspension of operations for a period of sixty (60) days will be considered abandonment in the absence of a labor dispute or other governmental action in which AIRLINE is directly involved.
- (6) Failure by AIRLINE to make under-utilized PFC-funded Airline Premises available for use by other Air Transportation Companies in accordance with Section 16.05 of this Agreement.

12.02 Continuing Responsibilities of AIRLINE. Notwithstanding the occurrence of any event of default, AIRLINE shall remain liable to AUTHORITY for all rentals, fees, and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless AUTHORITY elects to cancel this Agreement, AIRLINE shall remain liable for and promptly pay all rentals, fees, and charges accruing hereunder until termination of this Agreement as set forth in Article 3 or until this Agreement is canceled by AIRLINE pursuant to Article 13.

12.03 AUTHORITY's Remedies. Upon the occurrence of any event enumerated in Paragraphs 12.01A or 12.01B, including applicable notice and cure periods, the following remedies shall be available to AUTHORITY:

- A. AUTHORITY may exercise any remedy provided by law or in equity, including but not limited to the remedies hereinafter specified.
- B. AUTHORITY may cancel this Agreement, effective upon the date specified in the notice of cancellation. Upon such date, AIRLINE shall be deemed to have no further rights hereunder and AUTHORITY shall have the right to take immediate possession of AIRLINE's Airline Premises.
- C. AUTHORITY may reenter the Airline Premises and may remove all AIRLINE personal property from same upon the date of reentry specified in AUTHORITY's written notice of reentry to AIRLINE. For the event enumerated in Paragraph 12.01A, reentry shall be not less than fifteen (15) days from the date of notice of reentry. Upon any removal of AIRLINE property by AUTHORITY hereunder, AIRLINE property may be stored at a public warehouse or elsewhere at AIRLINE's sole cost and expense.
- D. AUTHORITY may relet Airline Premises and any improvements thereon or any part thereof at such rentals, fees, and charges and upon such other terms and conditions as AUTHORITY, in its sole discretion, may deem advisable, with the right to make alterations, repairs of improvements on said Airline Premises. In reletting the Airline Premises, AUTHORITY shall be obligated to make a good faith effort to obtain terms comparable than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of AIRLINE's event of default.
- E. In the event that AUTHORITY relets Airline Premises, rentals, fees, and charges received by

AUTHORITY from such reletting shall be applied: (i) to the payment of any indebtedness other than rentals, fees, and charges due hereunder from AIRLINE to AUTHORITY; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by AUTHORITY and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges as would have been payable during applicable periods by AIRLINE hereunder, then AIRLINE shall pay such deficiency to AUTHORITY. AIRLINE shall also pay to AUTHORITY, as soon as ascertained, any reasonable costs and expenses incurred by AUTHORITY in such reletting not covered by the rentals, fees, and charges received from such reletting.

F. No reentry or reletting of Airline Premises by AUTHORITY shall be construed as an election on AUTHORITY'S part to cancel this Agreement unless a written notice of cancellation is given to AIRLINE.

G. AIRLINE shall pay to AUTHORITY all other costs, incurred by AUTHORITY in the exercise of any remedy in this Article 12, including, but not limited to, reasonable attorney fees, disbursements, court costs, and expert fees.

12.04 Remedies Under Federal Bankruptcy Laws. Notwithstanding the foregoing, upon the filing by or against AIRLINE of any proceeding under Federal bankruptcy laws, if AIRLINE has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, AUTHORITY shall have the right to cancel this Agreement, in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, as such may be subsequently amended, supplemented, or replaced. Such cancellation shall be by written notice to AIRLINE within sixty (60) days from the date of AIRLINE's initial filing in bankruptcy court.

ARTICLE 13: CANCELLATION BY AIRLINE

13.01 Events of Default. The events described below shall be deemed events of default by AUTHORITY hereunder:

A. AUTHORITY fails to keep, perform, or observe any material term, covenant, or condition herein contained, to be kept, performed, or observed by AUTHORITY and such failure continues for sixty (60) days after receipt of written notice from AIRLINE; or, if by its nature such default cannot be cured within such sixty (60) day period, AUTHORITY shall not commence to cure or remove such default within said sixty (60) days and to cure or remove the same as promptly as reasonably practicable; provided, however, AUTHORITY's performance under this Paragraph shall be subject to the provisions of Section 18.25 of this Agreement.

B. Airport is closed to flights in general or to the flights of AIRLINE, for reasons other than those circumstances within AIRLINE's control, and Airport fails to be reopened to such flights within sixty (60) consecutive days from such closure.

C. The Airport is permanently closed as an air carrier airport by act of any federal, state, or local government agency having competent jurisdiction; or AIRLINE is unable to use Airport for a period of at least sixty (60) consecutive days due to any law or any order, rule or regulation of any governmental authority having jurisdiction over the operations of the Airport; or any court of competent jurisdiction issues an injunction preventing AUTHORITY or AIRLINE from using Airport for airport purposes, for reasons other than those circumstances within AIRLINE's control, and such injunction remains in force for a period of at least sixty (60) consecutive days.

D. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control, or use of the Airport in such a manner as to substantially restrict AIRLINE from conducting its operations, if such restriction be continued for a period of sixty (60) consecutive days or more.

13.02 AIRLINE's Remedy. So long as AIRLINE is not in default as set forth in Section 12.01 of this Agreement, including but not limited to payments due to AUTHORITY hereunder, AIRLINE may cancel this Agreement upon the occurrence of an event of default, as set forth in Section 13.01 and AUTHORITY's failure to cure or remove the same within the time periods set forth in that section. In such event, AIRLINE shall serve

fifteen (15) day advance written notice of cancellation to AUTHORITY. All rentals, fees, and charges payable by AIRLINE shall cease as of the date of such cancellation and AIRLINE shall surrender the Airline Premises in accordance with Article 14 hereof.

ARTICLE 14: SURRENDER OF AIRLINE PREMISES

14.01 Surrender and Delivery. Upon termination or cancellation of this Agreement, AIRLINE shall promptly and peaceably surrender to AUTHORITY its Airline Premises and all improvements thereon to which AUTHORITY is entitled in good and fit condition, reasonable wear and tear as well as damage or repair which is the responsibility of AUTHORITY hereunder excepted; provided, however, nothing in this Section 14.01 shall be construed to modify the obligations of the parties set forth in Article 9, Article 10, and Article 11.

14.02 Removal of Property.

A. Unless AIRLINE is in default for payment of rentals, fees, and charges hereunder, AIRLINE shall have the right at any time during the Term of this Agreement to remove from the Airport its aircraft (which AIRLINE may remove regardless of any default status), tools, equipment, trade fixtures, and other personal property, title to which shall remain in AIRLINE, unless otherwise set forth in this Agreement, and shall remove such aircraft, tools, equipment, trade fixtures, and other personal property within fifteen (15) business days following termination of this Agreement, whether by expiration of time or otherwise, as provided herein. AIRLINE shall not abandon any portion of its property at the Airport without the written consent of AUTHORITY.

B. Any and all property not removed by AIRLINE within thirty (30) business days following the date of termination of this Agreement and left on the Airport without the consent of the AUTHORITY shall, at the option of AUTHORITY, (i) become the property of AUTHORITY at no cost to AUTHORITY; (ii) be stored by AUTHORITY, at no cost to AUTHORITY and released to AIRLINE upon payment of any outstanding unpaid rentals, fees, or charges owed by AIRLINE; or (iii) sixty (60) days after the termination date be sold at public or private sale at no cost to AUTHORITY with the proceeds of any sale to be retained by AUTHORITY. Except as may be agreed to otherwise by AUTHORITY and AIRLINE, all AUTHORITY property damaged by or as a result of the removal of AIRLINE's property shall be restored by AIRLINE to the condition existing before such damage at AIRLINE's expense.

14.03 Holding Over. In the event AIRLINE uses its Airline Premises without the written consent of AUTHORITY after this Agreement has been canceled or expires, AIRLINE shall be deemed a tenant at sufferance during the period of such use and shall pay the rate for rentals, fees, and charges established by AUTHORITY for Air Transportation Companies which are not Signatory Airlines during such period. In such event, AUTHORITY shall have the right to all remedies provided under applicable laws; provided, however,

AUTHORITY's consent shall not be unreasonably withheld during any period of good faith lease negotiations between AIRLINE and AUTHORITY.

ARTICLE 15: ASSIGNMENT, SUBLETTING, AND HANDLING AGREEMENTS

15.01 Assignment and Subletting by AIRLINE.

A. In the event that AIRLINE shall, directly or indirectly, assign, sell, hypothecate, or otherwise transfer this Agreement, or any portion of Airline Premises, without the prior written consent of AUTHORITY, AUTHORITY, in its sole discretion may terminate this Agreement upon thirty (30) days written notice; provided, however, AIRLINE may assign; (i) this Agreement to any person, firm or corporation with which AIRLINE may merge or consolidate or which may succeed to the business of AIRLINE; or (ii) all or a part of its rights, privileges and obligations hereunder to another air carrier but only subject to the mutual approval of AIRLINE and AUTHORITY after cooperative efforts to find such an assignee and provided that such assignment shall not result in compensation to AIRLINE for the rights, privileges and obligations hereunder so assigned.

B. AIRLINE shall not sublease Airline Premises, other than to an Affiliate, without the prior written consent of AUTHORITY, which consent may be withheld if AUTHORITY has substantially similar space available, but unleased, or if AUTHORITY can make such space available for lease within a reasonable time, and, failing in this, such prior consent shall not be unreasonably withheld. Use of AIRLINE's Exclusive Use Premises or any part thereof, by anyone other than AIRLINE shall be deemed a sublease.

C. AIRLINE shall include with its request for permission to assign or sublease, a copy of the proposed assignment or sublease agreement. The assignment or sublease agreement submitted with AIRLINE's request shall include the following information: (i) the term; (ii) the area or space to be assigned or subleased; (iii) the sublease rentals to be charged; and (iv) the provision that assignee or sublessee must execute a separate agreement with AUTHORITY for operating at the Airport. Any other information reasonably requested by AUTHORITY pertaining to said sublease or assignment shall be promptly provided by AIRLINE. A fully executed copy of such sublease or assignment shall be submitted to AUTHORITY for final approval within sixty (60) days of the occupancy of Airline Premises, or any portion thereof, by the assignee or sublessee.

D. Nothing in this Article 15 shall be construed to release AIRLINE from its obligations under this Agreement, including but not limited to, the payment of rentals, fees, and charges provided herein.

15.02 Handling Agreements. In the event AIRLINE agrees to ground handle any portion of the operations of another Air Transportation Company, AIRLINE shall provide AUTHORITY advance written notice of such proposed activities, including a description of the type and extent of services to be provided. Notwithstanding the foregoing, AIRLINE shall not ground handle any Air Transportation Company which does not have consent of AUTHORITY for the operation of its Air Transportation Business at the Airport, and a handling agreement between AIRLINE and the Air Transportation Company.

ARTICLE 16: AVAILABILITY OF ADEQUATE FACILITIES

16.01 Declaration of Intent.

A. The parties acknowledge the objective of AUTHORITY to offer to all Air Transportation Companies desiring to serve Airport access to the Airport and to provide adequate gate positions and space in the Terminal. Recognizing that physical and financial limitations may preclude timely expansion of the Terminal and Terminal Aircraft Apron areas to meet the stated requests of AIRLINE and/or such other Air Transportation Companies ("Requesting Airlines") for additional facilities, AUTHORITY hereby states its intent to pursue the objective of achieving an optimum balance in the overall utilization of the Terminal and Terminal Aircraft Apron areas to be achieved, if necessary, through sharing, from time to time, of gate positions and other passenger handling facilities.

B. It is the policy of AUTHORITY, to the extent practicable, to solve space problems in the following manner: first, through AUTHORITY's leasing of unleased premises in the Terminal; second, through the use of AUTHORITY-approved subleases; third, through accommodation on Preferential Use Premises; fourth, through the expansion of the Terminal, unless in the opinion of AUTHORITY, physical, financial, or time limitations make expansion impractical; fifth, through the reassignment of Preferential Use Premises; and sixth, through accommodation of Exclusive Use Premises.

16.02 Accommodation on Preferential Use Premises.

A. AIRLINE shall cooperate with AUTHORITY to accommodate the needs of a Requesting Airline by permitting such Requesting Airline to utilize AIRLINE's Preferential Use Premises for the time period(s) necessary to permit passenger loading and unloading operations in conjunction with the scheduled operations of such Requesting Airline at times when the use of such facilities shall not interfere with AIRLINE's planned operations or those of its approved Affiliates, sublessees, licensees, or permittees. AUTHORITY will use its best efforts to leave AIRLINE on AIRLINE's preferentially-leased Airline Premises when accommodating the needs of a Requesting Airline.

B. AUTHORITY will first attempt to coordinate directly with Signatory Airlines in writing for the joint use of such Preferential Use Premises, if AUTHORITY has no available gates or other areas in the Terminal to accommodate the needs of said Requesting Airline.

C. AIRLINE's accommodation of a Requesting Airline may be the subject of a written agreement between AIRLINE and Requesting Airline, only if such agreement is approved in writing by AUTHORITY prior to the effective date thereof and Requesting Airline has entered into an agreement with AUTHORITY to operate at the Airport.

D. In determining if AIRLINE shall be required to accommodate a Requesting Airline, AUTHORITY shall consider AIRLINE's capabilities, capacity, facilities, and personnel therefor, after taking into account AIRLINE's own requirements and contractual obligations, the compatibility of said Requesting Airline's proposed operations with those of AIRLINE, and the need for labor harmony. AUTHORITY shall not require AIRLINE to accommodate a Requesting Airline if AUTHORITY has unassigned gates which can reasonably accommodate the needs of said Requesting Airline.

E. Provided, however, AIRLINE shall not be required to accommodate such other Air Transportation Companies pursuant to Paragraph 16.02D if all of AIRLINE's gate positions are occupied by AIRLINE's flights or flights of other Air Transportation Companies already being accommodated by AIRLINE for schedule, weather, or mechanical reasons at the time of said flight needing to be accommodated. For purposes of this provision, the overnight parking of AIRLINE's aircraft at a gate position or parking of AIRLINE's aircraft at a gate position other than between one (1) hour before arrival or one (1) hour after scheduled departure of AIRLINE's aircraft shall not be deemed occupation of said gate position. However, AUTHORITY shall use its best efforts to accommodate the Air Transportation Company on a gate not occupied by overnight parking of AIRLINE'S aircraft. If AIRLINE accommodates such other Air Transportation Companies then said other Air Transportation Companies shall be required to vacate AIRLINE's gate position at least sixty (60) minutes prior to AIRLINE's next scheduled flight arrival at said gate position.

F. Subject to the provisions of Sections 15.01 and 15.02, nothing contained in this Article shall prevent or prohibit AIRLINE from electing to enter into an agreement with other Scheduled Air Carriers authorized to operate into and out of the Airport and desiring the joint use of its Preferential Use Premises as provided in Article 15 herein.

G. AIRLINE shall cooperate with AUTHORITY to accommodate other Air Transportation Companies from time to time, as deemed necessary by AUTHORITY for situations including, but not limited to unscheduled flights, including charters, diversions due to weather, and other circumstances not otherwise accommodated or handled by a Signatory Airline.

H. During the period of use of AIRLINE's facilities by an Air Transportation Company pursuant to this Article 16, AIRLINE shall be relieved of its obligation under this Agreement to indemnify and save harmless AUTHORITY, its officers, directors, employees, or agents with regard to any claim for property damage or personal injury arising out of or in connection with said accommodated Air Transportation Company's use of its Preferential Use Premises, unless such damage or injury is caused by AIRLINE, its officers, directors, employees or agents who have come upon its Preferential Use Premises in connection with AIRLINE's occupancy hereunder.

16.03 Reassignment of Preferential Use Premises.

A. AUTHORITY shall provide at least one preferentially assigned gate to each Signatory Airline operating at least three flights per weekday. AUTHORITY reserves the right to reassign one or more of an AIRLINE's preferentially assigned gates to another Signatory Airline(s) if: (1) AIRLINE's scheduled average for any individual gate utilization falls below three (3) flights per gate per weekday (including flights of other Air Transportation Companies accommodated by AIRLINE); (2) AUTHORITY determines that there is a reasonable need for the preferential use of such gate(s) by another Signatory Airline(s); and (3) the new entrant Signatory Airline meets the required three (3) flights per gate per weekday minimum. Prior to such reassignment becoming effective, AIRLINE shall have a 90-day period to adjust its schedule to three or more flights per gate per week day so as not to be subject to such reassignment. When determining specific Preferential Use Premises to be reassigned, AUTHORITY shall not specify facilities that will disrupt the continuity and staffing of AIRLINE's operation.

B. In order to optimize passenger flow, use of the facility, and minimize future capital construction, AUTHORITY reserves the right to reassign aircraft parking positions and associated Preferential Use Premises and Exclusive Use Premises directly associated with AIRLINE's Preferential Use Premises in the Terminal. Should any reassignment occur AIRLINE will be assigned new space comparable in size quality and finish. Prior to any relocation AUTHORITY and AIRLINE will meet and agree on the amount of reimbursement due AIRLINE for the cost of providing tenant improvements, based on construction cost estimates, competitive bids, contract prices, or other information acceptable to the parties, that are comparable to the level of tenant improvements in AIRLINE's current Airline Premises for similar facilities and relocation costs. The costs associated with any extraordinary tenant improvements not addressed earlier in this paragraph will not be reimbursed by AUTHORITY.

16.04 Accommodation on Exclusive Ticket Counter and Baggage Makeup.

A. AIRLINE shall cooperate with AUTHORITY to accommodate the needs of a Requesting Airline by permitting such Requesting Airline to utilize AIRLINE's exclusive ticket counter and/or baggage makeup space for the time period(s) necessary to permit the Requesting Airline to operate its Air Transportation Business in conjunction with the scheduled operations of such Requesting Airline at times when the use of such facilities shall not interfere with AIRLINE's planned operations or those of its approved sublessees, licensees, or permittees.

B. AUTHORITY will first attempt to coordinate directly with AIRLINE in writing for the use of such exclusive ticket counter and/or baggage makeup space, if AUTHORITY has no available space in the Terminal to suitably accommodate the needs of said Requesting Airline.

C. AIRLINE's accommodation of a Requesting Airline may be the subject to a written agreement between AIRLINE and Requesting Airline, only if such agreement is approved in writing by AUTHORITY prior to the effective date thereof and Requesting Airline has entered into an agreement with AUTHORITY to operate at the Airport.

D. In determining if AIRLINE shall be required to accommodate a Requesting Airline, AUTHORITY shall consider AIRLINE's capabilities, capacity, facilities, and personnel therefor, after taking into account AIRLINE's own requirements and contractual obligations, the compatibility of said Requesting Airline's proposed operations with those of AIRLINE, and the need for labor harmony. AUTHORITY shall not require AIRLINE to accommodate a Requesting Airline if AUTHORITY has unleased premises which can reasonably accommodate the needs of said Requesting Airline.

E. During the period of use of AIRLINE's facilities by an Air Transportation Company pursuant to this Article 16, AIRLINE shall be relieved of its obligation under this Agreement to indemnify and save harmless AUTHORITY, its officers, directors, employees, or agents with regard to any claim for property damage or personal injury arising out of or in connection with said accommodated Air Transportation Company's use of its exclusive ticket counter and baggage makeup, unless such damage or injury is caused by AIRLINE, its officers, directors, employees or agents who have come upon its exclusive ticket counter and baggage makeup in connection with AIRLINE's occupancy hereunder.

16.05 Competitive Access to PFC-Funded Facilities. Should AIRLINE not fully utilize any portion of

its exclusively leased, PFC-funded Airline Premises, AIRLINE agrees to make such Airline Premises available for use by any Air Transportation Company. In accordance with 14 CFR Part 158, failure to make such Exclusive Use Premises available shall be grounds for termination of this Agreement pursuant to Section 12.01B.

16.06 Regional/Commuter Operations.

A. To the extent practical, aircraft that are capable of connecting to a loading bridge must use a Terminal Aircraft Apron equipped with a loading bridge for the enplaning and deplaning of passengers.

B. Aircraft that are not capable of connecting to a loading bridge will use those areas of the Terminal Aircraft Aprons designated by AUTHORITY and will be accessed from the ramp level through commuter facilities unless otherwise approved by AUTHORITY.

ARTICLE 17: GOVERNMENT INCLUSION

17.01 Government Agreements. This Agreement shall be subordinate to the provisions of any existing or future agreements between AUTHORITY and the United States Government or other governmental authority, relative to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of Federal or other governmental funds for the development of the Airport, to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority of other civil airports receiving such funds. AUTHORITY agrees to provide AIRLINE written advance notice of any provisions which would adversely modify the material terms of this Agreement.

17.02 Federal Government's Emergency Clause. All provisions of this Agreement shall be subordinate to the rights of the United States of America to operate the Airport or any part thereof during time of war or national emergency. Such rights shall supersede any provisions of this Agreement inconsistent with the operations of the Airport by the United States of America.

17.03 Nondiscrimination

A. AIRLINE for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree as a covenant running with the land that (i) 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 Airline Premises, (ii) in the construction of any improvements on, over, or under Airline Premises 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 (iii) AIRLINE shall use the Airline Premises in compliance with all other requirements imposed by or pursuant to 14 CFR 152 and Title VI of the Civil Rights Act of 1964 and 49 CFR, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Title and Regulations may be amended.

B. AIRLINE acknowledges that the provisions of 49 CFR, Part 23, Disadvantaged Business Enterprises (DBE), as said regulations may be amended, and such other similar regulations may be enacted, may be applicable to the activities of AIRLINE under the terms of this Agreement, unless exempted by said regulations, and AIRLINE hereby agrees to comply with the regulatory agencies, in

reference thereto. These requirements may include, but not be limited to, compliance with DBE 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, if so directed, the contracting of specified percentages of goods and services contracts to DBEs.

C. In the event of breach of any of the above nondiscrimination covenants which is not cured AUTHORITY shall have the right to cancel this Agreement after such action as the United States Government may direct to enforce this covenant has been followed and completed, including exercise or expiration of appeal rights.

17.04 Security. AIRLINE, its officers, employees, agents, and those under its control, shall comply with security measures required of AIRLINE or AUTHORITY by the FAA or contained in any Airport master security plan approved by the FAA to include an Airport Tenant Security Program as outlined in 49 CFR Part 1542 respective to AIRLINE's Exclusive Use Premises and Preferential Use Premises. If AIRLINE, its officers, employees, agents, or those under its control shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against AUTHORITY, then, in addition to the provisions of Section 11.01, AIRLINE shall be responsible and shall reimburse AUTHORITY in the full amount of any such monetary penalty or other damages.

17.05 Environmental.

A. General Conditions.

(1) Notwithstanding any other provisions in this AGREEMENT, and in addition to any and all other requirements of this AGREEMENT or any other covenants, representations or warranties of AIRLINE, AIRLINE hereby expressly covenants, warrants and represents to AUTHORITY, in connection with AIRLINE's operations at the airport the following :

(2) AIRLINE is knowledgeable of all applicable federal, state, and local environmental laws, ordinances, rules, regulations and orders, which apply to AIRLINE's operations at the airport and acknowledges that such environmental laws, ordinances, rules, regulations and orders change from time-to-time, and AIRLINE agrees to keep informed of any such future changes.

(3) AIRLINE agrees to comply with all applicable federal, state, and local environmental laws, ordinances, rules, regulations, and orders which apply to AIRLINE's operations. AIRLINE agrees to hold harmless and indemnify AUTHORITY and Lee County, Florida for any violation by AIRLINE of such applicable federal, state, and local environmental laws, ordinances, rules, regulations and orders and for any non-compliance by AIRLINE with any permits issued to AIRLINE pursuant to such environmental laws, which hold harmless and indemnity shall include, but not be limited to, enforcement actions to assess, abate, remediate, undertake corrective measures or monitor environmental conditions and for any monetary penalties, costs, expenses, or damages, including natural resource damages, imposed against AIRLINE, its employees, invitees, suppliers, or service providers or AUTHORITY by reason of AIRLINE's violation or non-compliance.

(4) AIRLINE agrees to cooperate with any investigation, audit or inquiry by AUTHORITY or any governmental agency, regarding possible violation of any environmental law or regulation upon the Airport.

(5) AIRLINE agrees that all remedies of AUTHORITY as provided herein with regard to AIRLINE's violation of any federal, state or local environmental laws, ordinances, rules, regulations or orders shall be deemed cumulative in nature and shall survive termination of this Agreement.

(6) AIRLINE agrees that any notice of violation, notice of non-compliance, or other enforcement action shall be provided to AUTHORITY within twenty-four (24) hours of receipt by AIRLINE or AIRLINE's agent. Any violation or notice of violation or non-compliance with federal, state, or local environmental law or ordinance shall be deemed a default under this Agreement. Such default may be cured within ten (10) days of receipt of notice of default from AUTHORITY, or such longer period as may be required to effect a cure provided AIRLINE commences a cure within said ten (10) days and thereafter diligently prosecutes the cure to completion. Any such default which is not cured shall be grounds for termination of this Agreement.

(7) In entering this Agreement, AUTHORITY expressly relies on the covenants, representations, and warranties of AIRLINE as stated herein.

B. Stormwater.

(1) Notwithstanding any other provisions or terms of this Agreement, AIRLINE acknowledges that certain properties within the Airport, or on AUTHORITY owned land, are subject to stormwater rules and regulations. AIRLINE agrees to observe and abide by such stormwater rules and regulations as may be applicable to AUTHORITY's property and uses thereof.

(2) AIRLINE acknowledges that any stormwater discharge permit issued to the AUTHORITY may name AIRLINE as a co-permitee. AUTHORITY and AIRLINE both acknowledge that close cooperation is necessary to insure compliance with any stormwater discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. AIRLINE acknowledges further that it may be necessary to undertake such actions to minimize the exposure of stormwater to "significant materials" generated, stored, handled or otherwise used by AIRLINE, as such term may be defined by applicable stormwater rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable stormwater rules and regulations.

(3) AUTHORITY will provide AIRLINE with written notice of any stormwater discharge permit requirements applicable to AIRLINE and with which AIRLINE will be obligated to comply from time-to-time, including, but not limited to: certification of non-stormwater discharges; preparation of stormwater pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. AIRLINE agrees that within ten (10) days of receipt of such written notice, it shall notify AUTHORITY in writing if it disputes any of the stormwater permit requirements it is being directed to undertake. If AIRLINE does not provide such timely notice, AIRLINE will be deemed to assent to undertake such stormwater permit requirements. In that event, AIRLINE agrees to undertake, at its sole expense, unless otherwise agreed to in writing between AUTHORITY and AIRLINE, those stormwater permit requirements for which it has received written notice from AUTHORITY, and AIRLINE agrees that it will hold harmless and indemnify AUTHORITY for any violations or non-compliance with any such permit requirements.

C. Solid and Hazardous Waste.

(1) If AIRLINE is deemed to be a generator of hazardous waste, as defined by federal, state or local law, AIRLINE shall obtain, if required, a generator identification number from the EPA and the appropriate generator permit, if required, and shall comply with all federal, state and local laws, and any rules and regulations promulgated thereunder, including but not limited to, insuring that the transportation, storage, handling and disposal of such hazardous wastes are conducted in full compliance with applicable law.

(2) AIRLINE agrees to provide AUTHORITY, upon request, copies of all hazardous waste permit application documentation, permits, monitoring reports, transportation, responses, storage and disposal plans and material safety data sheets, within ten (10) days of any such requests by AUTHORITY.

ARTICLE 18: GENERAL PROVISIONS

18.01 Subordination to Bond Resolution.

A. This Agreement and all rights granted to AIRLINE hereunder are expressly subordinated and subject to the lien, covenants (including the rate covenants), and provisions of the pledges, transfer, hypothecation, or assignment made by AUTHORITY in the Bond Resolution. AUTHORITY and AIRLINE agree that to the extent required by the Bond Resolution or law, the holders of the Bonds or their designated representatives shall have the right to exercise any and all rights of AUTHORITY hereunder.

B. AUTHORITY shall notify AIRLINE in advance of any amendments or supplements to the Bond Resolution that would materially alter the terms and provisions of this Agreement or materially impact the levels of rentals, fees, and charges paid by AIRLINE (herein referred to as Material Amendments).

C. For any Material Amendments or supplements desired solely by AUTHORITY for its own purposes, AUTHORITY and AIRLINE shall use their best efforts to agree on the implementation. However, in the event AUTHORITY and AIRLINE cannot agree on the implementation of any Material Amendments or supplements desired solely by AUTHORITY for its own purposes, AIRLINE, in addition to cancellation rights provided elsewhere in this Agreement, shall have the right to cancel this Agreement upon thirty (30) days advance written notice.

D. AIRLINE agrees to execute all instruments, certificates, or other documents reasonably requested by AUTHORITY to assist AUTHORITY and bond counsel in determining and assuring that Bonds are issued in compliance with applicable rules and regulations of the Internal Revenue Service and the Securities and Exchange Commission and AIRLINE shall provide whatever additional relevant information is reasonably requested by AUTHORITY initially or on an ongoing basis in connection with complying with any of those rules and regulations.

18.02 Nonwaiver. No waiver of default by either party of any of the terms, covenants, or conditions of this Agreement to be performed, kept, and observed by the other party shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions to be performed, kept, and observed by the other party and shall not be deemed a waiver of any right on the part of the other party to cancel this

Agreement as provided herein.

18.03 Passenger Facility Charge. AUTHORITY reserves the right to assess and collect PFC's subject to the terms and conditions set forth in the Aviation Safety and Capacity Expansion Act of 1990, Section 9110 (the "PFC Act") and implementing regulations as may be supplemented or amended from time to time. AIRLINE shall collect and pay all PFC's for which it is responsible under the provisions of 14 CFR Part 158. Failure by AIRLINE to remit PFCs within the time frame required by 14 CFR Part 158 shall be grounds for termination of this Agreement pursuant to Section 12.01B.

18.04 Rights Non-Exclusive. Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges, and licenses granted under this Agreement, are "non-exclusive" and AUTHORITY reserves the right to grant similar privileges to others.

18.05 Quiet Enjoyment.

A. AUTHORITY agrees that, so long as AIRLINE's payment of rentals, fees, and charges is timely and AIRLINE keeps all covenants and agreements contained herein, AIRLINE shall peaceably have and enjoy its Airline Premises and all rights, privileges, and licenses of the Airport, its appurtenances and facilities granted herein, subject to the terms and conditions herein contained.

B. Consistent with the nature of AIRLINE's business, AIRLINE agrees that occupancy of its Airline Premises will be lawful and that it will not knowingly use or permit the use of Airline Premises in any way that would violate the terms of this Agreement, create a nuisance, or disturb other tenants or the general public. AIRLINE shall be responsible for the activity of its officers, employees, agents, and others under its control with respect to this provision.

18.06 Performance. The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

18.07 Avigation Rights. 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 Airport, including Airline Premises, for navigation or flight in the said airspace for landing on, taking off from, or operating at the Airport.

18.08 Rules and Regulations and Operational Directives.

A. AIRLINE, its officers, employees, agents, and others under its control shall observe and obey all laws, regulations, and orders of the federal, state, county, municipal governments and AUTHORITY (acting in its governmental capacity) which may be applicable to AIRLINE'S operations at the Airport.

B. AUTHORITY, acting in its governmental capacity, may from time to time adopt, amend, or revise the Airport's rules and regulations and operating directives governing the conduct of operations at the Airport, for reasons of safety, health, preservation of the property, or for the maintenance of the good and orderly appearance of the Airport. AIRLINE, its officers, employees, agents, and others under its control shall faithfully comply with and observe such reasonable and non-discriminatory rules and regulations and operating directives, except as they may conflict with the terms and provisions of this Agreement, or the regulations of another governmental authority having appropriate jurisdiction. AUTHORITY shall notify AIRLINE in advance of any amendments or supplements to such rules and regulations and operating directives that would materially alter the terms of this Agreement adversely.

C. AIRLINE shall be strictly liable and responsible for obtaining, maintaining current, and fully complying with, any and all permits, licenses, and other governmental authorizations, however designated, as may be required at any time throughout the entire Term of this Agreement by any federal, state, or local governmental entity or any court of law having jurisdiction over AIRLINE or AIRLINE's operations and activities.

18.09 Inspection. AIRLINE shall allow AUTHORITY's authorized representatives access to Airline Premises for the purpose of examining and inspecting said premises; for purposes necessary, incidental to, or connected with the performance of its obligations under this Agreement; or, in the exercise of its governmental functions. Except in the case of an emergency, AUTHORITY shall conduct such inspections during reasonable business hours, after reasonable prior notice to AIRLINE, not to interfere with AIRLINE's normal operations, and in the presence of AIRLINE's representative.

18.10 No Individual Liability. No member, officer, agent, director, or employee of AUTHORITY or AIRLINE shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

18.11 Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees, and charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of landlord and tenant.

18.12 Capacity to Execute. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

18.13 Savings. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against AUTHORITY by reason of the preparation of this Agreement by AUTHORITY.

18.14 Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

18.15 Incorporation of Exhibits. All exhibits and attachments referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

18.16 Titles. Paragraph titles are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or extent of any provision of this Agreement.

18.17 Severability. In the event that any covenant, condition, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not materially prejudice either AUTHORITY or AIRLINE in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

18.18 Amendments. Except as provided in Sections 4.01 and 8.03, no amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

18.19 Most Favored Nation. AUTHORITY covenants and agrees not to enter into any basic airline use and lease agreement with any Air Transportation Company which (i) makes substantially similar use of the Airport, (ii) operates substantially similar aircraft, and (iii) utilizes substantially similar facilities to that of AIRLINE, which contains more favorable terms than this Agreement, or to grant to any such Air Transportation Company rights or privileges with respect to the Airport which are not afforded to AIRLINE hereunder unless substantially the same terms, rights, privileges, and facilities are concurrently made available to AIRLINE.

18.20 Other Agreements. Other than as set forth herein, nothing contained in this Agreement shall be deemed or construed to nullify, restrict, or modify in any manner the provisions of any other lease or contract between AUTHORITY and AIRLINE authorizing the use of the Airport, its facilities, and appurtenances.

18.21 Approvals.

A. Unless otherwise stated, whenever this Agreement calls for approval by AUTHORITY, such approval shall be evidenced by the written approval of the Executive Director.

B. Any approval required by either party to this Agreement shall not be unreasonably withheld, conditioned or delayed.

18.22 Notice.

A. All notices, requests, consents, and approvals served or given under this Agreement shall be served or given in writing with proof of delivery. If intended for AUTHORITY, notices shall be delivered to:

Executive Director
Lee County Port Authority
Southwest Florida International Airport
11000 Terminal Access Road, Suite 8671
Ft. Myers, FL 33913

or to such other address as may be designated by AUTHORITY by written notice to AIRLINE.

B. Notices to AIRLINE shall be delivered to:

Sun Country, Inc.
2005 Cargo Road
Minneapolis, MN 55450
Attn: Sr Director Airport Affairs
With copy to: General Counsel

or to such other address as may be designated by AIRLINE by written notice to AUTHORITY.

18.23 Agent For Service. It is expressly understood and agreed that if AIRLINE is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said state, AIRLINE shall appoint an agent for the purpose of service of process in any court action between it and AUTHORITY arising out of or based upon this Agreement. AIRLINE shall immediately, within ten (10) days of execution of this Agreement, notify AUTHORITY, in writing, of the name and address of said agent. Such service shall be made as provided by the laws of the State of Florida for service upon a non-resident engaging in business in the State. It is further expressly agreed, covenanted, and stipulated that, if for any reason, such service of process is not possible, as an alternative method of service of process, AIRLINE may be personally served out of the State of Florida by the registered mailing of such service at the address set forth in Section 18.22.

18.24 Governing Law and Legal Forum. This Agreement is to be read and construed in accordance with the laws of the State of Florida. All litigation concerning this Agreement by either party shall be instituted in Lee County, Florida.

18.25 Force Majeure. Except as herein provided, neither AUTHORITY nor AIRLINE shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than the payment of rentals, fees, and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which are not within its control.

18.26 Entire Agreement. It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by AIRLINE that AUTHORITY and AUTHORITY's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by AIRLINE against AUTHORITY for, and AUTHORITY shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement.

ARTICLE 19: CIVIL RIGHTS AND TITLE VI

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

19.02 Compliance with Nondiscrimination Requirements. During the performance of this contract, Airline, 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 sponsor 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.

19.03 Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

A. Airline, 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 Airline 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.

19.04 Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

A. Airline, 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 Airline 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.

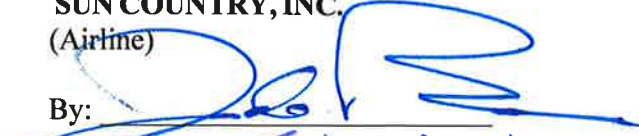
19.05 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Airline, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; 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 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the day and year first above written.

SUN COUNTRY, INC.
(Airline)

By: 

Print name: Jude Bricker

Title: CEO

Date: 10/1/2021

LEE COUNTY PORT AUTHORITY

**ATTEST:
LINDA DOGGETT, CLERK**

By: _____
Chairman or Vice Chairman,
Board of Port Commissioners

By: _____
Deputy Clerk

Date: _____

Date: _____

Approved As To Form
for the Reliance of the
Lee County Port Authority only:

By: _____
Port Authority Attorney

Date: _____

EXHIBIT B

To

AIRLINE – AIRPORT AND LEASE AGREEMENT

With

SUN COUNTRY, INC.

FOR

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

PART 1

Airline shall have in the Terminal:

1. the preferential, but not exclusive, right to use the following gate position(s) and, associated loading bridge(s) and equipment assigned for its use as shown on Page 1 of Part II of this Exhibit B: **B9**; the number of Airline's preferentially assigned gate positions shall be used to determine Airline's Apron Fee rent and Gate Area rent.
2. the exclusive use of the following spaces assigned for its use as shown on page 2 of Part II of this Exhibit B:
 - (a) **437.5** square feet of ticket counter space;
 - (b) **108** square feet of ticket office space;
3. the exclusive use of the baggage belt within the **4,095** square foot baggage make-up space, as shown on Page 3 of Part II of this Exhibit B; and
4. the right of joint use with other airlines to use the Baggage Claim Area in the Terminal as shown on Page 4 of Part II of this Exhibit B.

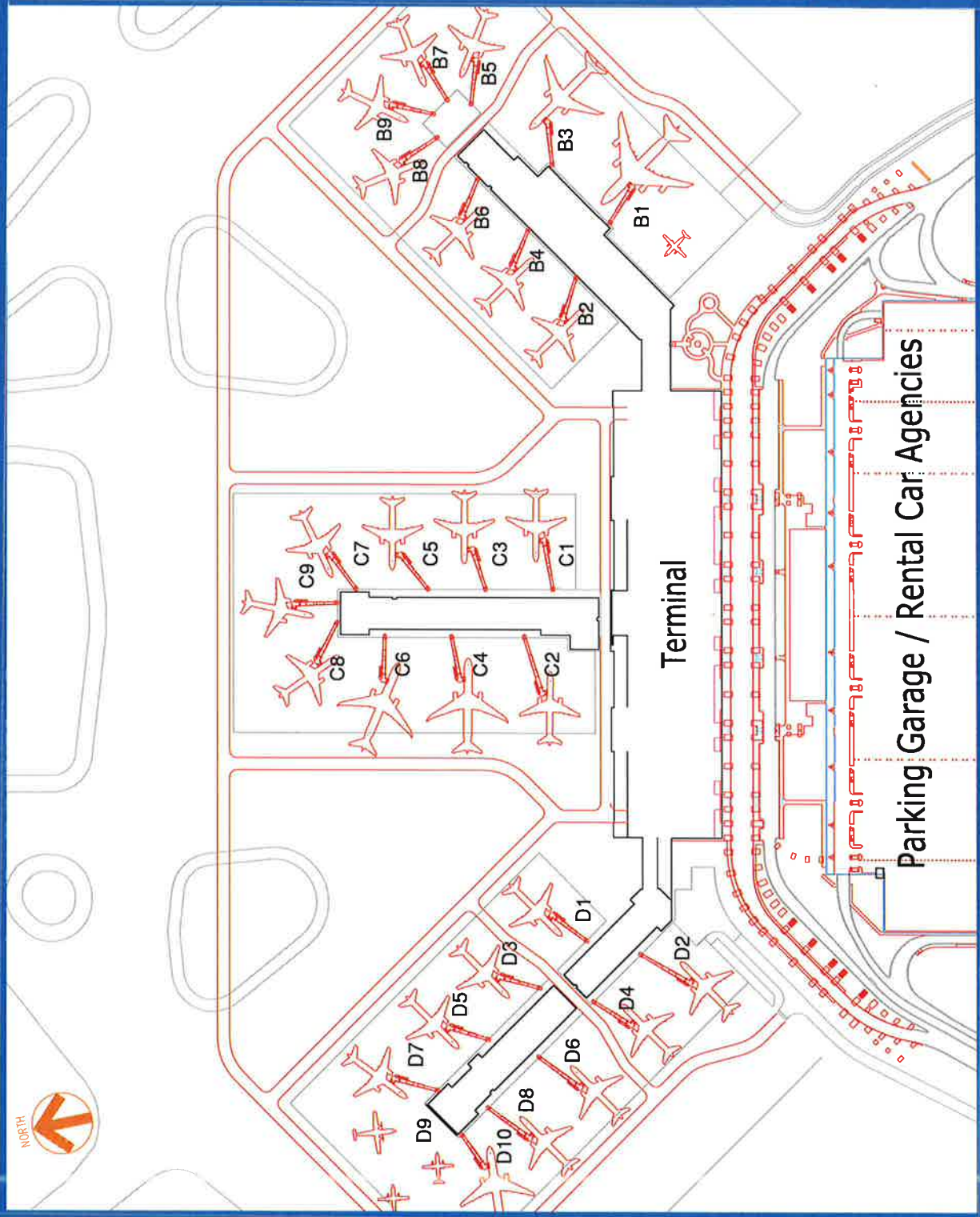
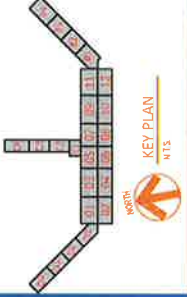


Midfield Terminal

Exhibit B Part II (Page 1 of 5)

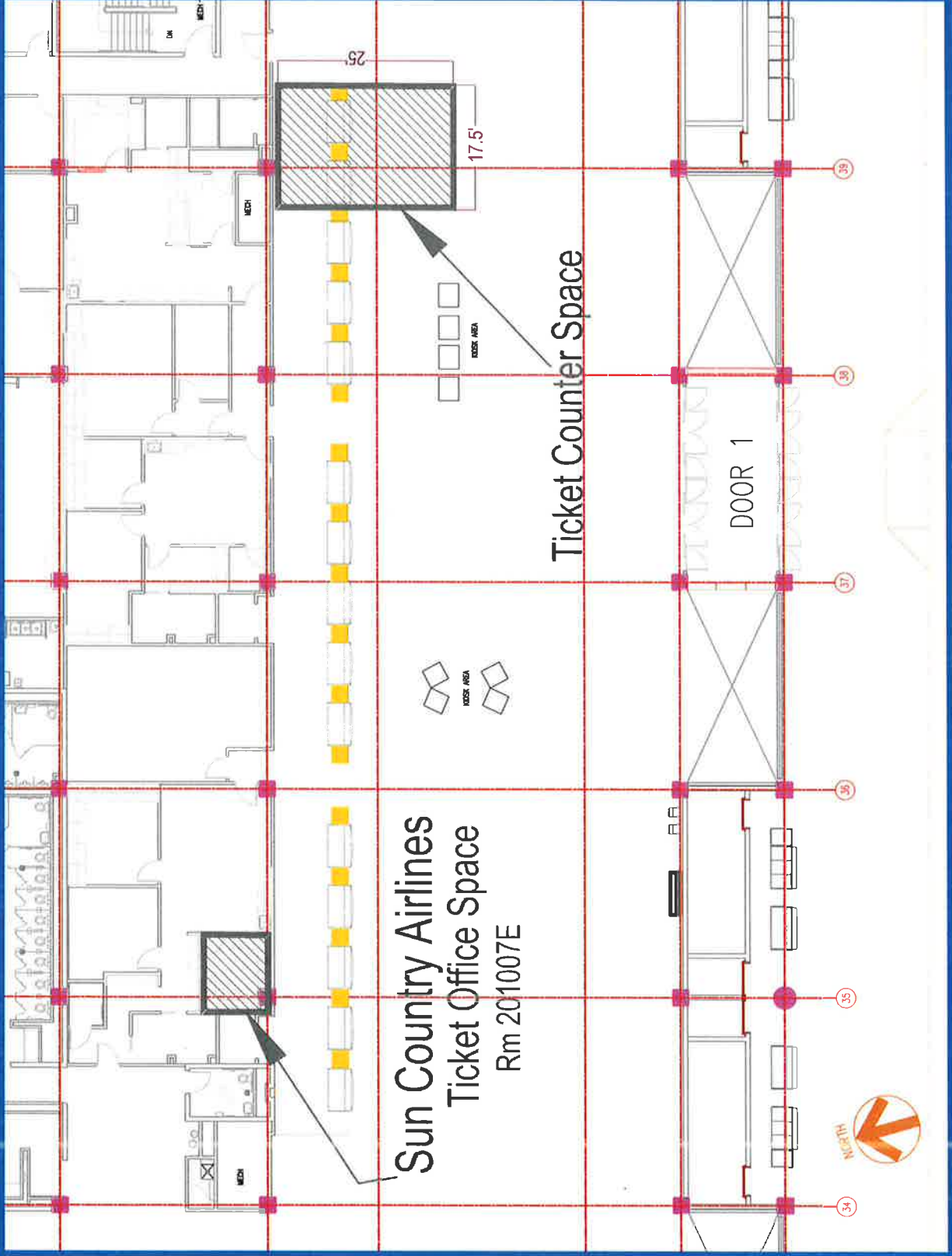
Sun Country Airlines Gate Designation

Date: 12 - August - 2021



Parking Garage / Rental Car Agencies

Terminal





Terminal Building

Exhibit B

Part II

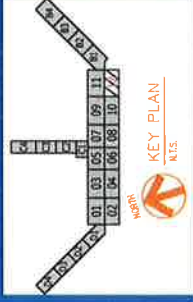
(Page 3 of 5)

First Floor
(Arrivals Level)

Sun Country
Airlines

Baggage Make-up
Area

Date: 21-September-2021



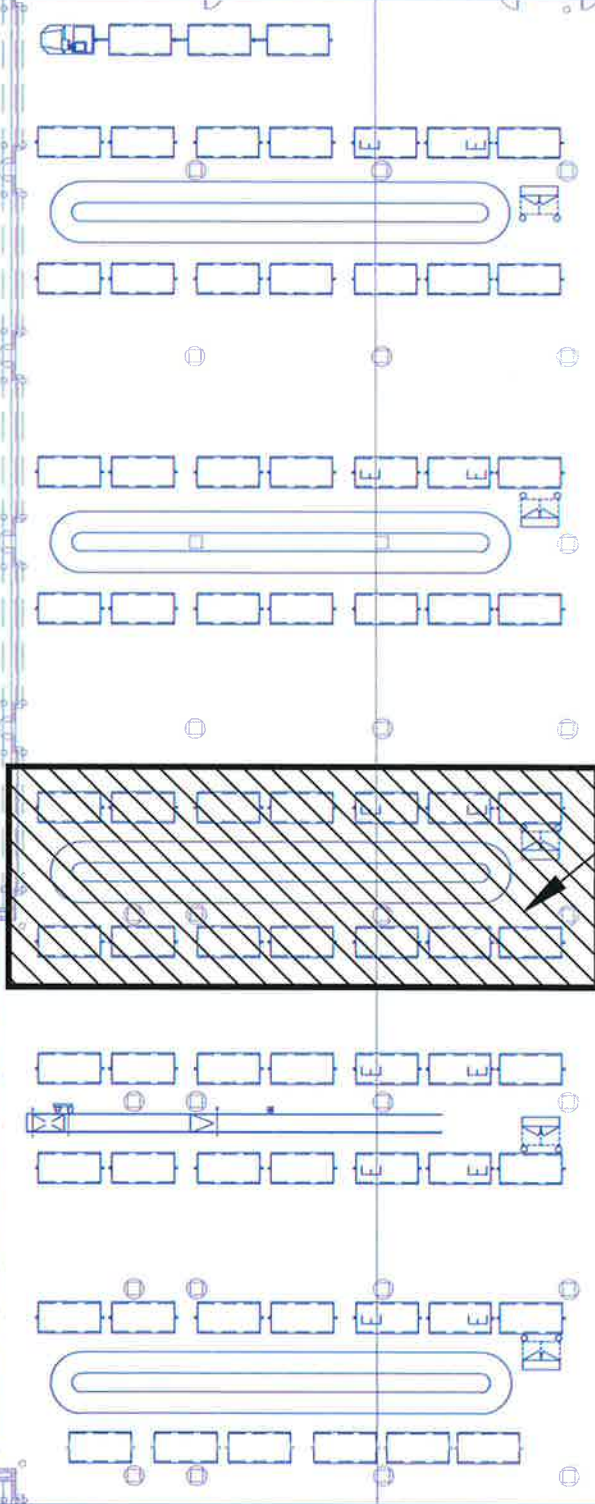
PIER 1

PIER 2

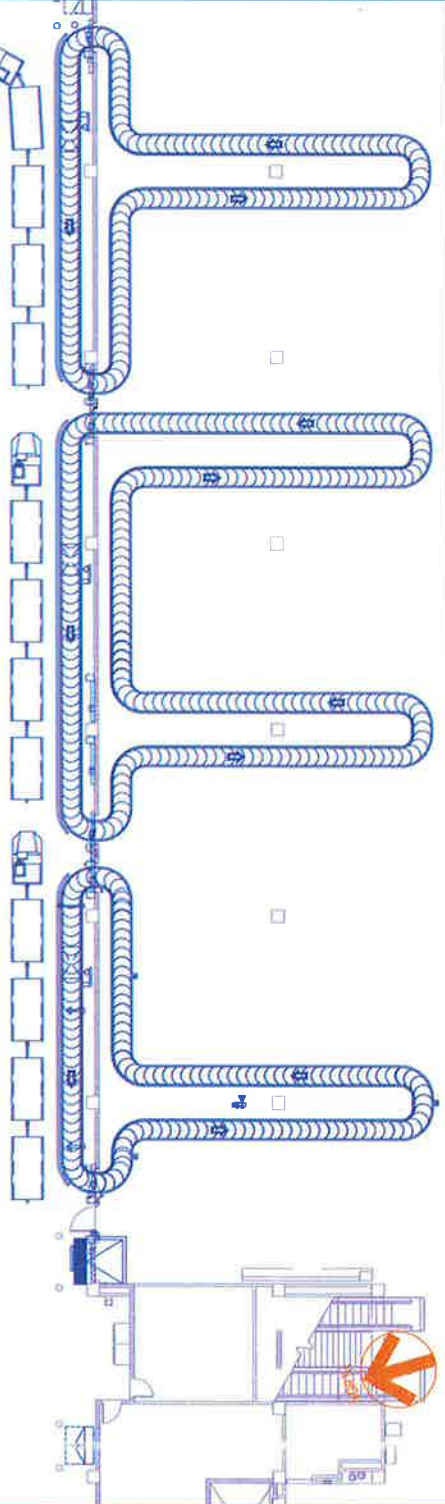
PIER 3

PIER 4

PIER 5



Sun Country Airlines Leased Space



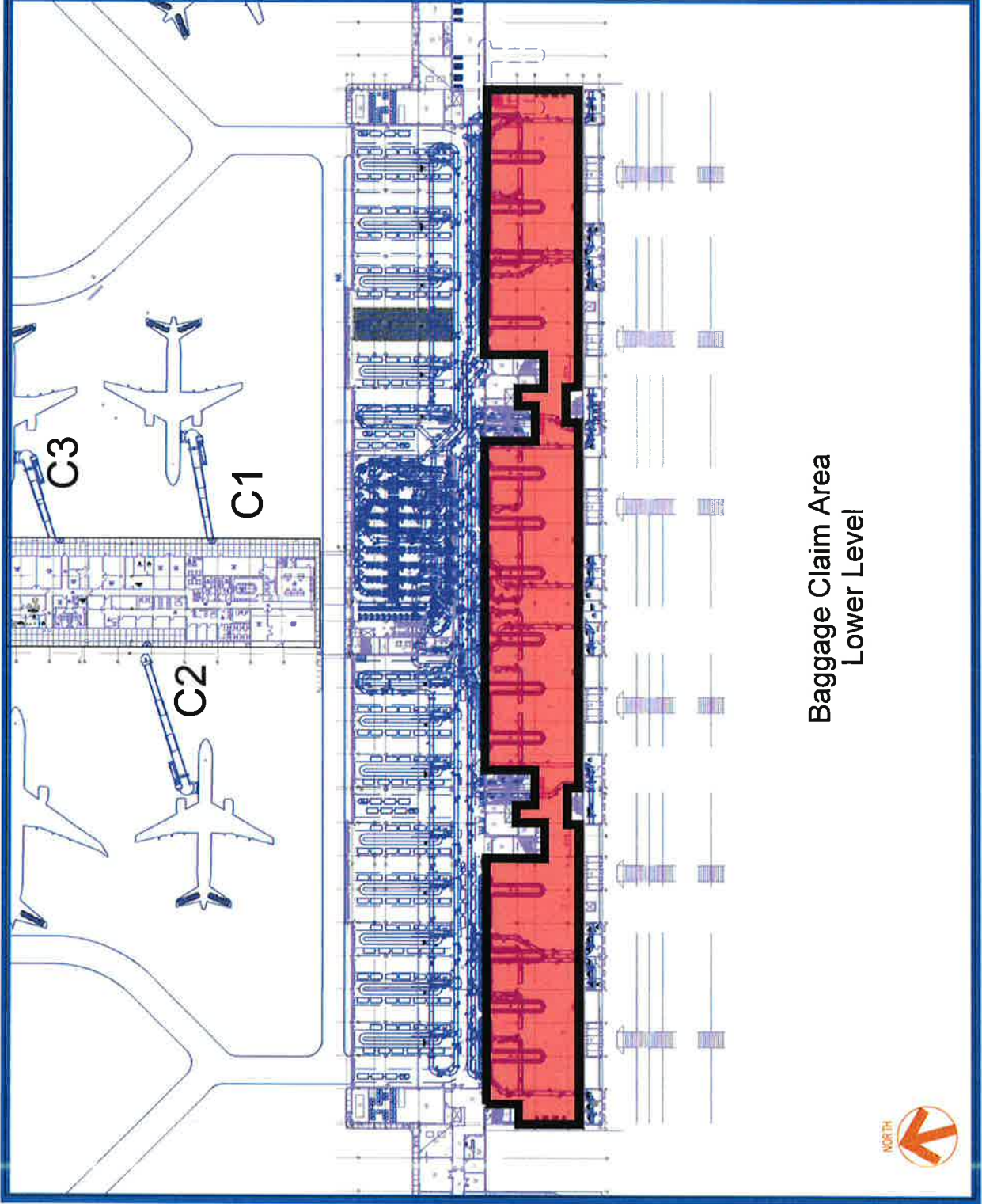
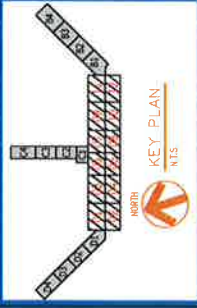


Midfield Terminal

Exhibit B
Part II
(Page 4 of 5)

Baggage Claim
Lower Level

Date: 12 - August - 2021



Baggage Claim Area
Lower Level



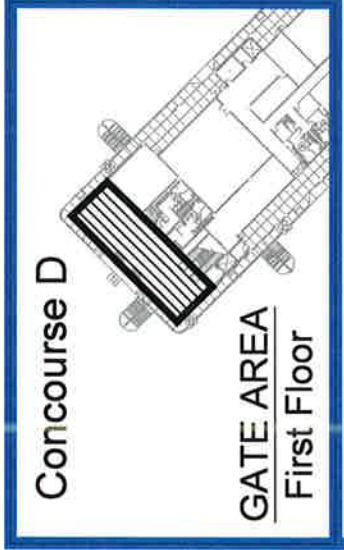
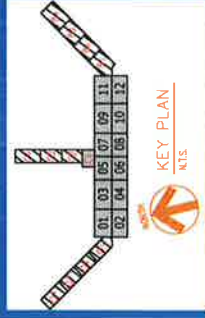


Midfield Terminal

Exhibit B
Part II
(Page 5 of 5)

Gate Areas

Date: 12 - August - 2021



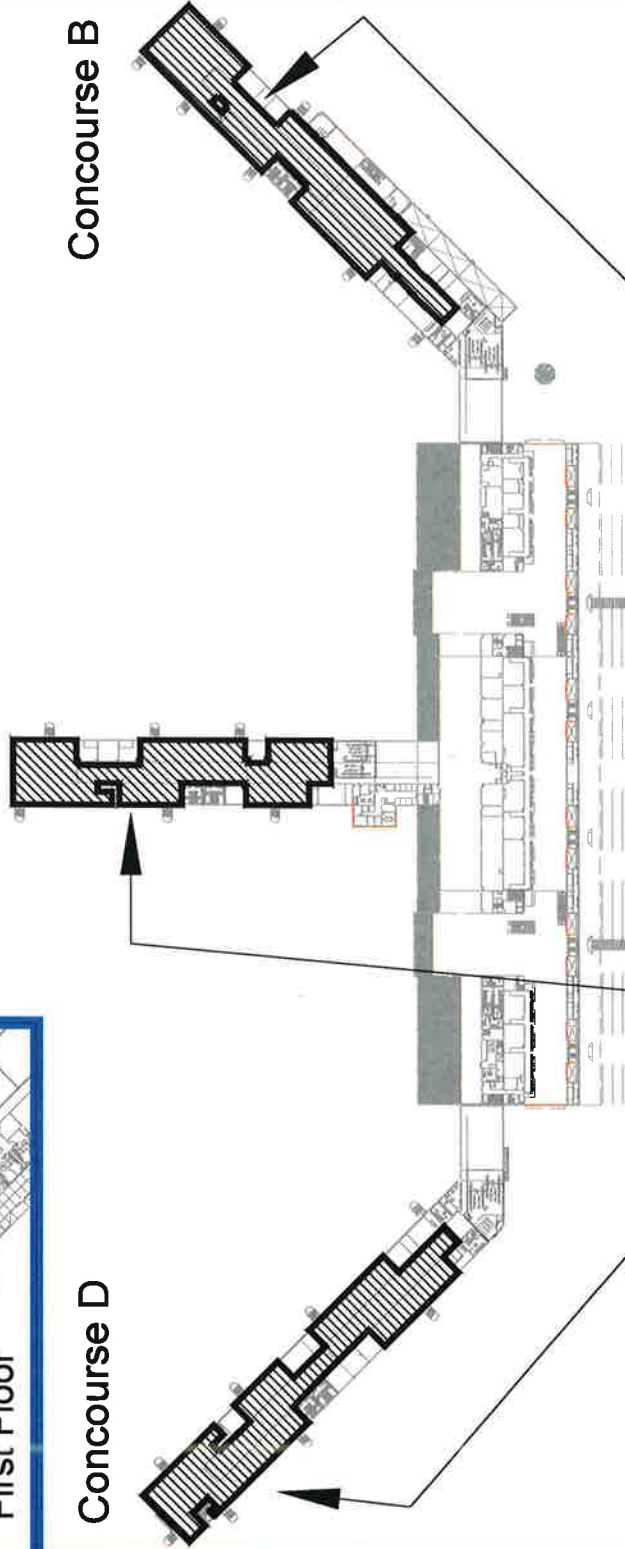
Concourse D

GATE AREA
First Floor

Concourse C

Concourse D

Concourse B

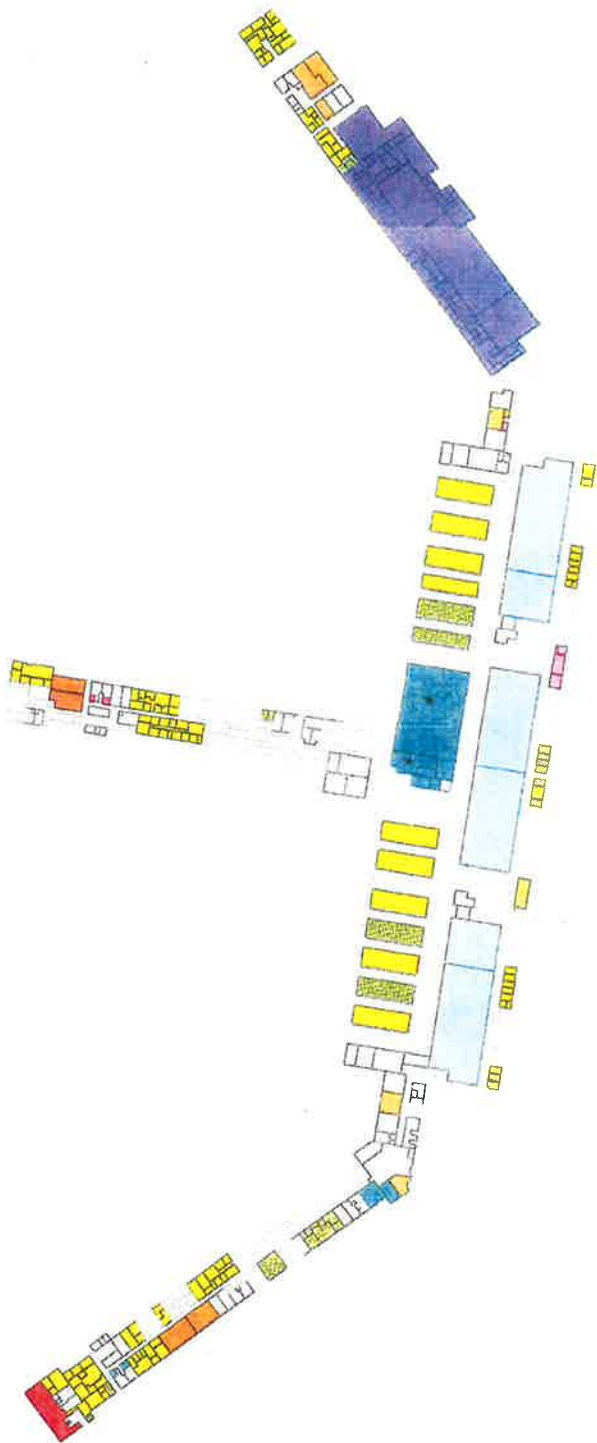


GATE AREAS
(Second Floor)





Summary of Terminal Area



Legend

- 00 530 Airline Strikes
- 13452 Airline Vacant / Common Use
- 59850 Baggage Claim
- 13929 Concessions
- 14019 FIS
- 2462 Gate / Holdroom
- 26385 LCPA OPS / MTC
- 30304 Mechanical
- 14894 Other Tonnage
- 13443 TSA
- 59451 Public Circulation / Screening

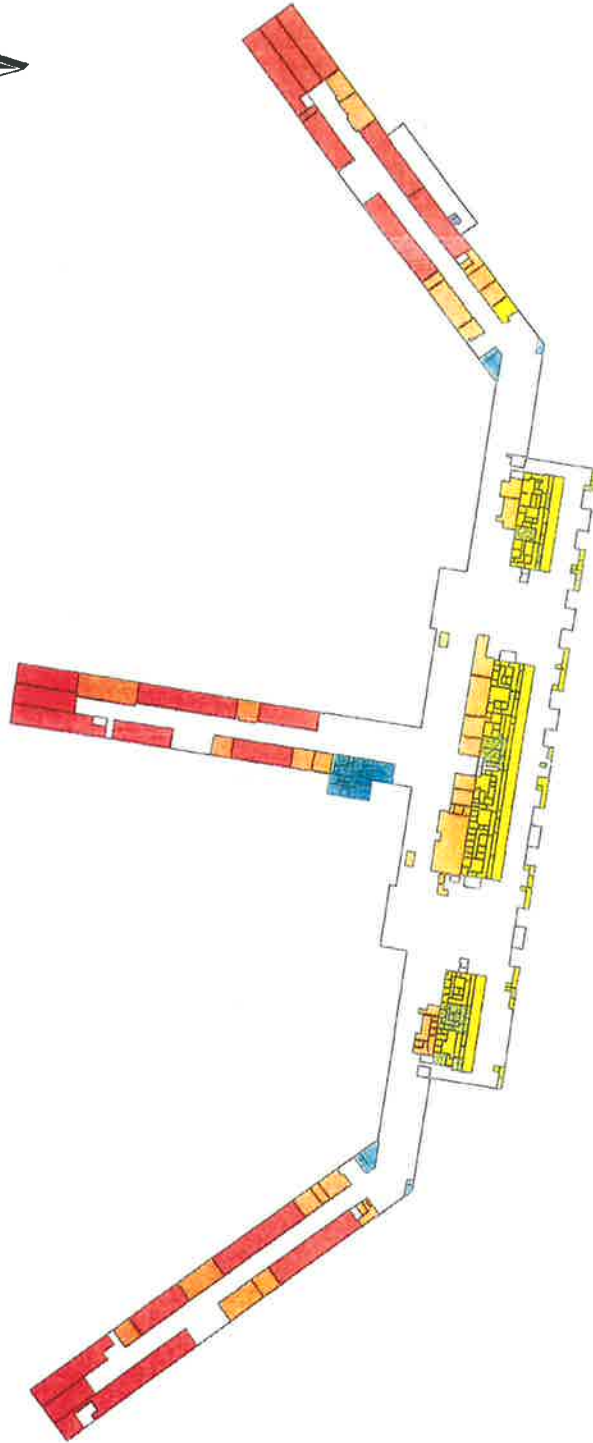
* The area is under TSA, but is not marked. The area is included in the public circulation total for TSA.

LEE COUNTY PORT AUTHORITY FIRST FLOOR ROOM USE





Summary of Terminal Area



Legend

Airline Exclusive	23,355
Airline Vending/Concession Use	10,201
Baggage Claim	0
Concessions	38,086
FS	218
Gate/ Holdroom	76,516
LCRA OPS /MTC	0
Nonaircraft	3,584
Other Interiors	0
TSA	6,276
Public/ Circulation/ Screening	103,655

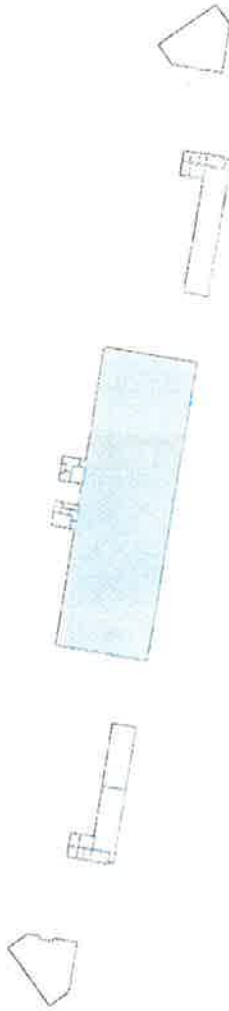
LEE COUNTY PORT AUTHORITY SECOND FLOOR ROOM USE



Lee County Port Authority
1000 Airport Blvd
Tallahassee, FL 32304

Summary of Terminal Area

EXHIBIT C

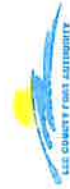


Legend

- Airline Exclusive
- Airline Vendors / Common Use
- Baggage Claim
- Connections
- F&B
- Gate / Holdroom
- LCCA OPS / MTC
- Inspection
- Other Terminals
- TSA
- Non-Volant/Ship
- Public / Crustalium / Screening

Usage	Total All Floors
Airline Exclusive	84,000
Airline Vendors / Common Use	20,603
Baggage Claim	60,000
Connections	49,027
F&B	42,737
LCCA OPS / MTC	76,980
Inspection	26,900
Other Terminals	70,200
TSA	1,481
Administration	7,821
Public / Crustalium / Screening	40,800
Building Area Total	793,828

LEE COUNTY PORT AUTHORITY
THIRD FLOOR ROOM USE



Lee County Port Authority
1000 N. ...
Tallahassee, FL 32301

C-3

**Southwest Florida International Airport
Airline-Airport Use and Lease Agreement**

PORT AUTHORITY and AIRLINE Responsibilities for Terminal Maintenance Operations

	EXCLUSIVE USE PREMISES						PREFERENTIAL USE				COMMON USE AREAS		
	Baggage Make Up	Ticket Counters	Ticket and Bag Service Offices		Operations Areas	Aircraft Aprons	Hold Rooms	Baggage Claim	Tug Drives	Inbound Baggage Systems	Outbound Conveyor Systems		
1. Air Conditioning													
a. Maintenance	N/A	P	P	P	P	N/A	P	P	N/A	N/A	N/A		
b. Operations	N/A	P	P	P	P	N/A	P	P	N/A	N/A	N/A		
c. Chilled Air Distribution	N/A	P	P	P	P	N/A	P	P	N/A	N/A	N/A		
2. Heating													
a. Maintenance	N/A	P	P	P	P	N/A	P	P	N/A	N/A	N/A		
b. Operations	N/A	P	P	P	P	N/A	P	P	N/A	N/A	N/A		
c. Warm Air Distribution	N/A	P	P	P	P	N/A	P	P	N/A	N/A	N/A		
3. Lighting													
a. Bulb Replacement	P	P	A	A	A	P	P	P	N/A	N/A	N/A		
b. Maintenance	P	P	P	P	P	P	P	P	N/A	N/A	N/A		
4. Electrical Maintenance	P	P	P	P	P	P	P	P	P	P	P		
5. Mechanical Systems	P	P	P	P	P	N/A	P	P	P	P	P		
6. Water													
a. Distribution	N/A	N/A	P	P	P	P	N/A	N/A	N/A	N/A	N/A		
b. Fixtures	N/A	N/A	P	P	P	P	N/A	N/A	N/A	N/A	N/A		
7. Sewage													
a. Distribution	N/A	N/A	N/A	N/A	P	P	N/A	N/A	N/A	N/A	N/A		
b. Fixtures	N/A	N/A	N/A	N/A	P	P	N/A	N/A	N/A	N/A	N/A		
8. Maintenance													
a. Other than Structure	P	P	P	P	P	P	P	P	P	P	P		
b. Structure	P	P	P	P	P	P	P	P	P	P	P		
c. Exterior	P	N/A	N/A	N/A	P	P	P	P	P	P	P		
d. Markings/Signage	P	A&P	A&P	N/A	N/A	P	P	P	P	P	P		
9. Custodial Service	P	P	A	A	A	P	P	P	P	P	P		
10. Window Cleaning													
a. Exterior	N/A	N/A	N/A	P	P	N/A	P	P	N/A	N/A	N/A		
b. Interior	N/A	N/A	A	A	A	N/A	P	P	N/A	N/A	N/A		

Exhibit D

A - Airline Responsibility
P - Port Authority Responsibility

MONTHLY STATISTICS REPORT

Exhibit E

TO: LEE COUNTY PORT AUTHORITY, FT. MYERS

CARRIER: _____

ATTN: _____

MONTH/YEAR: _____

SIGNATURE: _____

Date: _____

PASSENGERS

JET BRIDGE

400 HZ

DOMESTIC PASSENGERS ENPLANED	_____	B1	_____	_____
DOMESTIC PASSENGERS DEPLANED	_____	B2	_____	_____
DOMESTIC NONREVENUE PASSENGERS ENPLANED	_____	B3	_____	_____
DOMESTIC NONREVENUE PASSENGERS DEPLANED	_____	B4	_____	_____
INTERNATIONAL PASSENGERS ENPLANED	_____	B5	_____	_____
INTERNATIONAL PASSENGERS DEPLANED	_____	B6	_____	_____
INTL NONREVENUE PASSENGERS ENPLANED	_____	B7	_____	_____
INTL NONREVENUE PASSENGERS DEPLANED	_____	B8	_____	_____

MAIL AND FREIGHT

AIR MAIL POUNDS BOARDED	_____	C1	_____	_____
AIR MAIL POUNDS DEPLANED	_____	C2	_____	_____
DOMESTIC AIR FREIGHT POUNDS BOARDED*	_____	C3	_____	_____
DOMESTIC AIR FREIGHT POUNDS DEPLANED*	_____	C4	_____	_____
INTERNATIONAL FREIGHT POUNDS BOARDED	_____	C5	_____	_____
INTERNATIONAL FREIGHT POUNDS DEPLANED	_____	C6	_____	_____

OF DIVERSIONS _____ 0

OF INCENTIVE FLIGHTS _____ 0

NUMBER OF LANDINGS AND WEIGHT OF FLIGHTS OPERATED

# OF LANDINGS	EQUIP TYPE	LANDING WT	TOTAL WT	0
_____	_____	_____	_____	_____
# OF LANDINGS	EQUIP TYPE	LANDING WT	TOTAL WT	0
_____	_____	_____	_____	_____
# OF LANDINGS	EQUIP TYPE	LANDING WT	TOTAL WT	0
_____	_____	_____	_____	_____
# OF LANDINGS	EQUIP TYPE	LANDING WT	TOTAL WT	0
_____	_____	_____	_____	_____
# OF LANDINGS	EQUIP TYPE	LANDING WT	TOTAL WT	0
_____	_____	_____	_____	_____
TOTAL				0

EXHIBIT F: CHANGES IN RATES FOR RENTALS, FEES AND CHARGES

F.1 Changes in Rates for Terminal Rentals, Landing Fees and Apron Fees. The required average Terminal Rental Rate, Landing Fee Rate and Apron Fee Rate shall be calculated in accordance with Exhibits "F-1", "F-2" and "F-3", respectively.

F.2 Summary of Rates for Rate Setting Period

- A. *Terminal Rental Rates* - For the period extending from October 1, ____ through September 30, ____, the Terminal rental rates for Signatory Airlines shall be \$ ____ per square foot.
- B. *Landing Fee Rate* - For the period extending from October 1, ____ through September 30, ____, the Landing Fee Rate for Signatory Airlines shall be \$ ____ per 1,000 pounds of Maximum Gross Landed Weight.
- C. *Apron Fee Rate* - For the period extending from October 1, ____ through September 30, ____, the Apron Fee Rate for Signatory Airlines shall be \$ ____ per gate.

F.3 Explanation of Calculation of Terminal Rental Rates, Exhibit F-1 Line Items

- A. *Investment Service* - 100 percent of the Investment Service attributable to the Terminal Cost Center.
- B. *Operating Expenses* - (direct and allocated indirect) attributable to the Terminal Cost Center.
- C. *Operating Expense Reserve* - Amounts needed to establish or maintain the Authority's O&M Reserve Requirement of not more than three months Operating Expenses, prorated to the Terminal Cost Center.
- D. *Amortization* - 100 percent of the Amortization attributable to the Terminal Cost Center.
- E. *TOTAL TERMINAL REQUIREMENT* - Sum of A through D, above.
- F. *Pledged PFC Revenues* - PFC Revenues authorized for the repayment of eligible debt service in the Terminal Cost Center.
- G. *Authority FIS Credit* - Credit for FIS based on annual international nonsignatory deplanements multiplied by \$2.00 per deplanement.
- H. *NET TERMINAL REQUIREMENT* - E minus F, minus G, above.
- I. *Total Rentable Space* - Total Terminal Rentable Square Feet available for lease or use by Air Transportation Companies, concessionaires, and other tenants, as depicted in Exhibit "C."
- J. *SIGNATORY AIRLINE TERMINAL RENTAL RATE* - H divided by I, above.

F.4 Explanation of Calculation of Landing Fee Rate, Exhibit F-2 Line Items

- A. *Investment Service* - 100 percent of the Investment Service attributable to the Airfield Cost Center.
- B. *Operating Expenses* - (direct and allocated indirect) attributable to the Airfield Cost Center.
- C. *Operating Expense Reserve* - Amounts needed to establish or maintain the Authority's O&M Reserve Requirement of not more than three months Operating Expenses, prorated to the Airfield Cost Center.
- D. *Amortization* - 100 percent of the Amortization attributable to the Airfield Cost Center.
- E. *TOTAL AIRFIELD REQUIREMENT* - Sum of A through D, above.
- F. *Airfield Nonairline Revenues* - Nonairline revenues attributed to the Airfield Cost Center.
- G. *NET AIRFIELD REQUIREMENT* - E minus F, above.
- H. *Signatory Landed Weight* - 100 percent of Maximum Gross Landed Weight for all Signatory Airlines and their Affiliates using the Airport.
- I. *Non-Signatory Airline Landed Weight* - 100 percent of Maximum Gross Landed Weight for all non-signatory airlines using the Airport.
- J. *TOTAL LANDED WEIGHT* - H plus I, above.
- K. *LANDING FEE* - G divided by J, above.

F.5 Explanation of Calculation of Apron Fee Rate, Exhibit F-3 Line Items

- A. *Investment Service* - 100 percent of the Investment Service attributable to the Apron Cost Center.
- B. *Operating Expenses* - (direct and allocated indirect) attributable to the Apron Cost Center.
- C. *Operating Expense Reserve* - Amounts needed to establish or maintain the Authority's O&M Reserve Requirement of not more than three months Operating Expenses, prorated to the Apron Cost Center.
- D. *Amortization* - 100 percent of the Amortization attributable to the Apron Cost Center.
- E. *TOTAL APRON REQUIREMENT* - Sum of A through D, above.
- F. *Total Gates* - Number of leaseable gates in the Terminal Building.
- G. *APRON FEE (per gate)* - E divided by F, above.

F.6 Calculation of Baggage Claim Area (Common Use Charges) 20 percent proration. For the calculation of each Signatory Airline's share of Baggage Claim Terminal Rentals (20% proration) in the Terminal Building, the Authority first determines the amount of total Baggage Claim Terminal Rentals. This amount is then allocated in the following manner:

- 20 percent equally among the number of Signatory Airlines; and
- 80 percent prorated among the Signatory Airlines based on the ratio of each Signatory Airline's Enplaned Passengers annually at the Airport to the total of all Signatory Airlines' Enplaned Passengers at the Airport.

20 percent proration:

- A. *SIGNATORY AIRLINE TERMINAL RENTAL RATE* - F.3.I above.
- B. *Total Baggage Claim Area (square feet)* - Total square feet area of the Baggage Claim Area.
- C. *Total Baggage Claim Area Rental Revenues* – A times B, above
- D. *20% Proration* – C times 20 percent.
- E. *Number of Signatory Airlines* – the number of Signatory Airlines that will share the 20 percent proration.
- F. *Baggage Claim Area Rental Revenues by Airline (20% proration)* D divided by E.

80 percent proration:

- A. *SIGNATORY AIRLINE TERMINAL RENTAL RATE* - F.3.I above.
- B. *Total Baggage Claim Area (square feet)* - Total square feet area of the Baggage Claim Area.
- C. *Total Baggage Claim Area Rental Revenues* – A times B, above
- D. *80% Proration* – C times 80 percent.
- E. *Total Signatory Enplanements* – Signatory Airlines' total enplanements estimated for the fiscal year.
- F. *Baggage Claim Area Rental Revenues by Enplanement (80% proration)* D divided by E.

F.7 Calculation of Terminal Holdroom Rent. The determination for each Signatory Airline's rental for holdroom space will be determined by taking the average Terminal rental rate, multiplied by the total square feet of holdroom space in the Terminal to arrive at the total holdroom requirement. This total requirement is then divided by the number of gates in the Terminal to produce an annual amount per gate. This per gate amount is then multiplied by each signatory Airline's leased gates to determine each Signatory Airline's total holdroom requirement.

F.8 Calculation of Revenue Sharing. The amounts available for any Revenue Sharing consideration will be determined after completion of Settlement each Fiscal Year and after calculation of the debt service coverage. Forty percent of the net Revenues available to be shared will be allocated to each Signatory Airlines and Affiliate based on the ratio of each Signatory Airline's and each Affiliate's Enplaned Passengers to the total of all Signatory Airlines' Enplaned Passengers at the Airport, and will be drawn from the Discretionary Fund and sent to each respective Signatory Airline and each Affiliate.

EXHIBIT F.1			
	<i>Lee County Port Authority</i>		
	<i>Southwest Florida International Airport (RSW)</i>		
CALCULATION OF TERMINAL RENTAL RATE			
	<u>Fiscal Year Ending:</u>		
A	Terminal Investment Service		
B	Terminal Operating Expenses		
C	Terminal Operating Expense Reserve		
C	Terminal Amortization		
E	TOTAL TERMINAL REQUIREMENT	A+B+C+D	
	<u>LESS:</u>		
F	Pledged PFC Revenue		
G	Authority FIS Credit		
H	NET TERMINAL REQUIREMENT	E - F - G	
I	Total Rentable Space		
J	SIGNATORY AIRLINE TERMINAL RENTAL RATE	H / I	
K	NON-SIGNATORY TERMINAL RENTAL RATE (110%)	J x 110%	

EXHIBIT F.2		
	<i>Lee County Port Authority</i>	
	<i>Southwest Florida International Airport (RSW)</i>	
CALCULATION OF LANDING FEE RATE		
	<u>Fiscal Year Ending:</u>	
	<u>Landing Fee Calculation:</u>	
A	Airfield Investment Service	
B	Airfield Operating Expenses	
C	Airfield Operating Expense Reserve	
D	Airfield Amortization	
E	TOTAL AIRFIELD REQUIREMENT	A+B+C+D
	<u>LESS:</u>	
F	Airfield Nonairline Revenues	
G	NET AIRFIELD REQUIREMENT	E - F
H	Signatory Landed Weight (000's)	
I	Non-Signatory Airline Landed Weight (000's)	
J	TOTAL LANDED WEIGHT	H+I
K	LANDING FEE	G / J

EXHIBIT F.3			
	<i>Lee County Port Authority</i>		
	<i>Southwest Florida International Airport (RSW)</i>		
CALCULATION OF APRON FEE RATE			
	<u>Fiscal Year Ending:</u>		
A	Apron Investment Service		
B	Apron Operating Expenses		
C	Apron Operating Expense Reserve		
D	Apron Amortization		
E	TOTAL APRON REQUIREMENT	A+B+C+D	
F	TOTAL GATES		
G	APRON FEE (per gate)	E / F	

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Board approve the key terms and proposed concepts to Paradies for the terminal concession program.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: N/A</p> <p>4. WHAT ACTION ACCOMPLISHES: Provides the parameters to move forward with a long term deal and the negotiations of a contract with Paradies based on the concepts presented and the key terms of the business agreement.</p>	<p>5. CATEGORY: 29. Administrative Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</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>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p>
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10. BACKGROUND:

Since Southwest Florida International Airport's current terminal opened in 2005, Host International, Inc. ("Host") has operated the food and beverage concessions and Paradies-Shell Factory ("Paradies") has operated the retail concessions. Host's current lease covers approximately 21,971 square feet of concessions space, housing 19 different concessions. Paradies' current lease covers approximately 17,654 square feet, housing 20 different concessions. (Both concessionaires also occupy storage and office spaces which support their operations.)

The planned terminal expansion project will significantly increase the size of the terminal building, allowing for significantly more concession space. It will also include the consolidation of the TSA screening checkpoints, which will shift much of the airport's concession program from pre-security to post-security. In preparation for the expansion project and the resulting impacts on the concessions program, the Authority has utilized the consulting company ICF to formulate a plan for how to best expand the concessions program, maximize passenger satisfaction, and maximize airport revenues. The plan calls for, among other things, add new concepts in the new space, and then refresh all of the existing ones.

At the May 19, 2019 and January 16, 2020 Joint Board Meeting, the staff made a presentation on the design of Terminal Expansion project and the Board endorsed the extension of the Paradies and Host's contracts. To achieve this plan, while minimizing disruption to concession operations during the project, staff believes it would be in the Airport's best interest to retain Host and Paradies as a large part of the overall concessions program, and to, subsequently, issue an RFP for a third hybrid entrant. To that end, staff has negotiated, with Paradies, the tentative main contract terms outlined on the attached term sheet, and has also solicited their ideas on potential new concession concepts they might

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<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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Background (continued)

bring to the airport.

Paradies is prepared to present their planned concession concepts for the new contracts, which are anticipated to be proposed for ASMC and Board review and approval on a later date, on substantially the same terms as set forth in the attached non-binding term sheets, provided the remaining details can be satisfactorily negotiated.

Approval of this agenda item by the Board of Port Commissioners will signify the Authority's desire to negotiate a new concession lease with Paradies on substantially the same material terms as outlined in the attached term sheet.

Attachments:

1. Term Sheet

DRAFT TERM SHEET

Concessionaire/Tenant: Paradies-Shell Factory II, LLC

Guarantor: The Paradies Shops, Inc.

Term of Lease: Commencing early 2022, and expiring December 31, 2035

Initial Leased Premises: Same as under existing lease (21 concession units).

Transition to New Premises: As outlined on the attached Exhibit A and Exhibit B, Concessionaire will:

- (a) Close four (4) of its existing Concession Units, perform demo and removal, remodel, and reopen them as three (3) new post security concession locations with new concepts;
- (b) Close three (3) of its existing Concession Units, gain additional square footage from other existing units currently operated by another concessionaire, perform demo and removal, then build out and open new concessions with expanded footprints in three (3) post security concession locations with new concepts;
- (c) Close and vacate its remaining fourteen (14) existing Concession Units, to be assigned to other concessionaires or permanently closed;
- (d) Perform build out in twelve (12) new post security shell spaces and open as up to twelve (12) new post security concession locations; and
- (e) Perform build out in one (1) new pre security shell space and open as one (1) new pre security concession location.

We understand the timing of these closings, openings, and associated construction work will be further discussed and refined in the coming months, and will be subject to change as construction of the terminal expansion project progresses, but is anticipated to be generally as outlined on the attached Exhibit B.

Final Leased Premises: nineteen (19) concession units, as per the attached Exhibits A and B

Storage/office areas: to be determined

Concessionaire's Minimum

Capital Investment: \$700/sf for food/beverage concessions; \$350/sf for retail concessions

Concessionaire's Minimum

Mid-term Refurbishment: \$70/sf for food/beverage concessions; \$35/sf for retail concessions

Timing of Concessionaire's

Mid-term Refurbishments: refurbishment of each unit to be completed within 90 days of the date that is: (a) 5 years after that unit's DBO, and (b) if the lease is still in force, again 10 years after that unit's DBO, unless remaining term is less than 3 years and the unit is still in good condition.

ACDBE Goal: 17%

Payments to Authority: Monthly, the sum of (A) through (E), as follows:

(A) Concession Fee: the greater of:

- (1) the Minimum Monthly Guarantee ("MMG") as described below; or
- (2) a Privilege Fee equal to the sum of the following percentages of each concession unit's gross revenue:
 - (a) from the effective date of the new agreement until the closure of each existing concession unit, the same % of gross revenue as is specified in the existing concession agreement; and
 - (b) from the opening or reopening of each ultimate concession unit, the following percentage of each unit's gross revenue (to be specified in the new agreement for each concession, based on the category applicable to the concession):

Retail

Specialty retail: 15%

Convenience retail: 18% (except Grab and Go food and beverage items, which will be 12%)

Food/Bev

Table service: 12.5%

Counter service (QSR): 13%

Coffee/pastry shops: 16%

Walkaway/Grab and Go: 12%

Alcoholic beverages sold at any location: 18% (except sealed bottles sold at retail for consumption off-premises, which will be 15%)

Merchandise sold at any food/beverage location: 22%

MMG will remain at 70 cents/EPAX (as under existing contract) until one or

more of Concessionaire's existing concession units (excluding D-2) is either removed from Concessionaire's leased premises or closed for Concessionaire's construction to redevelop the unit. Thereafter, MMG will be reduced to 58 cents/EPAX, subject to CPI increases at 2-year intervals, for the remainder of the term. MMG will be waived for any calendar month in which, as of the first day of that month, Concessionaire's finished concession units total less than 17,500 sf.

- (B) Rent for Storage and Office Areas (not within concession units): initial rent to be calculated at \$40/sf/year (then subject to CPI increases at 2-year intervals)
- (C) Building Service Fee (for each concession unit): initially \$0.60 per square foot (then subject to CPI increases at 2-year intervals)
- (D) CRDC Fees: upon completion of LCPA's construction of a Consolidated Receiving and Distribution Center (i.e. remote loading dock) as planned, LCPA may (a) elect to require Concessionaire to utilize it for receiving all shipments from off-airport; (b) hire a third party to operate it and provide distribution and delivery services for Concessionaire's goods to the airport terminal and/or concourses; and (c) pass through those costs of operation, including amortization and debt service from the construction of same (amortized over 30 years), plus a markup for LCPA's overhead (not to exceed 15% for operational costs such as maintenance, operations, and insurance, and not to exceed 1.5% on amortization and debt service), to Concessionaire and any other concessionaires, via a monthly fee to be allocated amongst the concessionaires using the CRDC on a reasonable basis determined by LCPA, based upon the share of floor area, concession sales, or similar method.
- (E) Marketing Fee: a percentage of gross revenue to be determined by LCPA, but not to exceed 0.5%, commencing not less than 30 days prior to written notice by LCPA of its election to implement a marketing fee.

Marketing Fund: In the event LCPA, at its option, implements a marketing fee as set forth above, it will spend such funds collected from Concessionaire on advertising, marketing, and promotion of RSW concessions.

Concessions Handbook: LCPA plans to complete, and provide to Concessionaire, a Concessions Handbook, containing a compilation of procedures and requirements governing the operations and actions of concessionaires and their employees, representatives, contractors, and vendors, which will be incorporated into the concession lease.

Pricing Standard: For merchandise with a pre-printed price affixed by the manufacturer or distributor, the selling price shall not exceed the pre-printed price.

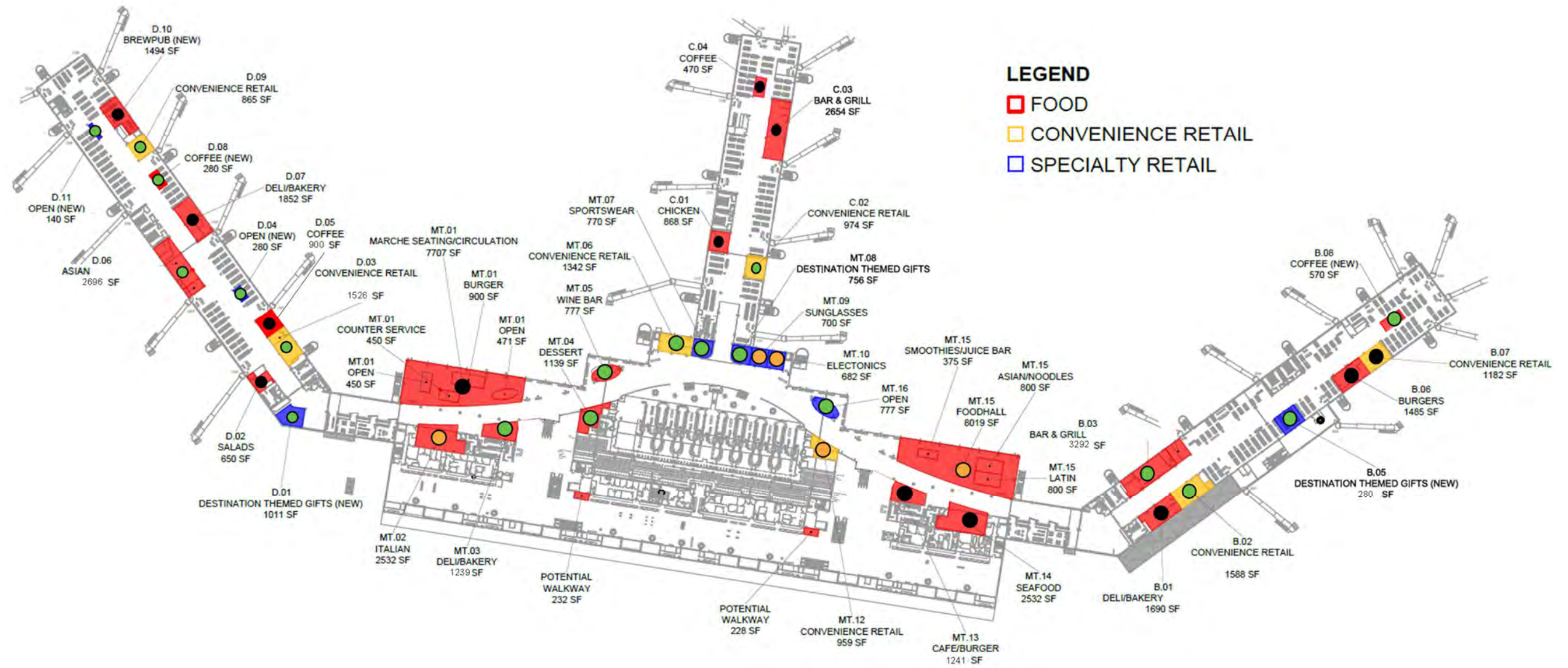
For Concession Units represented off-airport within a 25 mile

radius of the Airport, the selling price shall not exceed the selling price for the same products and services at the closest off-Airport establishment by more than ten percent (10%).

For Concession Units not represented off-airport within a 25 mile radius of the Airport, the selling price shall not exceed more than ten percent (10%) of the average selling price for similar or reasonably equivalent products and services at three comparable establishments located within a 25 mile radius of the Airport.

Completion of Negotiations: The parties aim to have a proposed lease agreement reduced to final written form, signed by Concessionaire and Guarantor, and delivered to LCPA no later than December 3, 2021, for scheduling of review of same by LCPA's ASMC and Port Board.

Exhibit A: Paradies Lagardere Terminal Diagram



- Host
- Paradies
- Hybrid

Exhibit B (v8)

Paradies to close 4 existing Concession Units, perform demo and removal, remodel, and reopen as 3 new post security Concession Locations with New Concepts:

Existing Brand	Existing Unit #	Location	New Unit #	New Approx. Area (sf)	New Category/Concept	Tentative Projected Closing Date	Tentative Projected Opening Date
A Day at the Beach	B-5	Concourse B	B.02	1,582	Convenience Retail	May - July 2023	120 days after closing date
Sanibel Marketplace	B.6.A.	Concourse B					
Lee Island Coast Travelmart	C.9.A	Concourse C	C.02	974	Convenience Retail	May - July 2025	120 days after closing date
CNBC News of Ft Myers	D.18.A.	Concourse D	D.09	865	Convenience Retail	May - July 2024	120 days after closing date

Paradies to close 3 existing Concession Units, gain additional sf from other existing units, perform demo and removal, then build out and open new concessions with expanded footprints in 3 post security Concession Locations with New Concepts:

Existing Brand	Existing Unit #	Location	Additional units	New Unit #	New Approx. Area (sf)	New Category/Concept	Tentative Projected Closing Date	Tentative Projected Opening Date
Brighton Collectibles	B.7.A.	Concourse B	Existing units B.4.B. and B.6.B. (Starbucks and Beaches Boardwalk Café) are also added to new location	B.03	3,292	Table Service - Bar & Grill	May - July 2025-26	180 days after closing date
Sanibel Marketplace	D.4.A.	Concourse D	Existing unit D.5.A. (Starbucks) is also added to the new location	D.03	1,466	Convenience Retail	May - July 2026	120 days after closing date
Coastal Expressions	D.10.A.	Concourse D	Existing unit D.11.A. (Casa Bacardi) is also added to the new location	D.06	2,695	Table Service - Asian	May - July 2025	180 days after closing date

Paradies to close and vacate 14 existing Concession Units:

Existing Brand	Existing Unit #	Location	Tentative Projected Closing Date
Beaches Travel Mart/Dunkin Donuts	T-3	Main Terminal (east)	5/1/2025
Beaches Travel Mart/Dunkin Donuts	T-4 and T-5	Main Terminal (west)	5/1/2025
Brighton Collectables	T.24.A, T.24.B, and T.25A	Main Terminal	10/1/2023
PGA Shop		Main Terminal	10/1/2023
Tropical Expressions and Dyan's Candy Bar	T.26.A and T.27.A.	Main Terminal	10/1/2023
Coastal News	T.28.A.	Main Terminal	10/1/2023
CNBC News Ft. Myers	B.18.A.	Concourse B	5/1/2025
The Shell Factory	C.7.A.	Concourse C	5/1/2025
Newsstand and food/bev kiosk	D-2	Concourse D	12/1/2022
A Day at the Beach	D.6.A.	Concourse D	5/1/2026
newsstand and gift shop (kiosk)	Bag Claim-1	Main Terminal Bag Claim	5/1/2025

Paradies to build out and open 12 new post security Concession Locations:

Location	New Unit #	Approx. Area (sf) Subject to Final Design	Tentative Projected Turnover Date	Tentative Projected Opening Date	Category/Concept	Brand
Main Terminal	MT.04	1,142	May-July 2024	120 days after turnover date	Dessert or Quick Serve Food	TBD
Main Terminal	MT.05	777	May-July 2024	120 days after turnover date	Wine Bar	TBD
Main Terminal	MT.06	1,356	May-July 2024	120 days after turnover date	Convenience Retail	TBD
Main Terminal	MT.07	759	May-July 2024	120 days after turnover date	Sportswear	TBD
Main Terminal	MT.08	759	May-July 2024	120 days after turnover date	Specialty Retail	TBD
Main Terminal	MT.16	777	May-July 2024	120 days after turnover date	Open	TBD
Concourse B	B.05	600	May-July 2022	120 days after turnover date	Specialty Retail	TBD
Concourse B	B.08	570	May-July 2022	120 days after turnover date	Coffee	TBD
Concourse D	D.01	1,011	May - July 2026	120 days after turnover date	Specialty Retail	TBD
Concourse D	D.04	280	May - July 2022	120 days after turnover date	Specialty Retail	TBD
Concourse D	D.08	280	May-July 2022	120 days after turnover date	Coffee or Open	TBD
Concourse D	D.11	140	May-July 2022	120 days after turnover date	Open or Coffee	TBD

Paradies to build out and open 1 new pre security Concession Locations:

Location	New Unit #	Approx. Area (sf) Subject to Final Design	Tentative Projected Turnover Date	Tentative Projected Opening Date	Category/Concept	Brand
Main Terminal	MT.03	1,239	May-July 2024	120 days after turnover date	Deli/Bakery	TBD

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Board approve the key terms and proposed concepts to Host for the terminal concession program.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: N/A</p> <p>4. WHAT ACTION ACCOMPLISHES: Provides the parameters to move forward with a long term deal and the negotiations of a contract with Host based on the concepts presented and the key terms of the business agreement.</p>	<p>5. CATEGORY: 30. Administrative Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</p>
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<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)</p> <p>NAME <u>Brian McGonagle</u></p> <p>DIV. <u>Administration</u></p>
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10. BACKGROUND:

Since Southwest Florida International Airport's current terminal opened in 2005, Host International, Inc. ("Host") has operated the food and beverage concessions and Paradies-Shell Factory II, LLC ("Paradies") has operated the retail concessions. Host's current lease covers approximately 21,971 square feet of concessions space, housing 19 different concessions. Paradies' current lease covers approximately 17,654 square feet, housing 20 different concessions. (Both concessionaires also occupy storage and office spaces which support their operations.)

The planned terminal expansion project will significantly increase the size of the terminal building, allowing for significantly more concession space. It will also include the consolidation of the TSA screening checkpoints, which will shift much of the airport's concession program from pre-security to post-security. In preparation for the expansion project and the resulting impacts on the concessions program, the Authority has utilized the consulting company ICF to formulate a plan for how to best expand the concessions program, maximize passenger satisfaction, and maximize airport revenues. The plan calls for, among other things, add new concepts in the new space, and then refresh all of the existing ones.

At the May 19, 2019 and January 16, 2020 Joint Board Meeting, the staff made a presentation on the design of Terminal Expansion project and the Board endorsed the extension of the Paradies and Host's contracts. To achieve this plan, while minimizing disruption to concession operations during the project, staff believes it would be in the Airport's best interest to retain Host and Paradies as a large part of the overall concessions program, and to, subsequently, issue an RFP for a third hybrid entrant. To that end, staff has negotiated, with Host, the tentative main contract terms outlined on the attached term sheet, and has also solicited their ideas on potential new concession concepts they might bring to the

11. RECOMMENDED APPROVAL

<u>DEPUTY EXEC DIRECTOR</u>	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Brian W. McGonagle</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Trank</i>	<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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Background (continued)

airport.

Host is prepared to present their planned concession concepts for the new contracts, which are anticipated to be proposed for ASMC and Board review and approval on a later date, on substantially the same terms as set forth in the attached non-binding term sheets, provided the remaining details can be satisfactorily negotiated.

Approval of this agenda item by the Board of Port Commissioners will signify the Authority's desire to negotiate a new concession lease with Host on substantially the same material terms as outlined in the attached term sheet.

Attachments:

1. Term Sheet

DRAFT TERM SHEET

Concessionaire/Tenant: Host International, Inc.

Term of Lease: Commencing early 2022, and expiring December 31, 2035

Initial Leased Premises: Same as under existing lease (21 concession units).

Transition to New Premises: As outlined on the attached Exhibit A and Exhibit B, Concessionaire will:

- (a) Close eight (8) of its existing Concession Units, perform demo and remodel, and reopen them as six (6) new post security concession locations with new concepts;
- (b) Close and vacate its remaining thirteen (13) existing Concession Units, to be assigned to other concessionaires or permanently closed;
- (c) Perform demo and removal in four (4) existing concession spaces currently occupied by another concessionaire, then build out and open these locations as four (4) new post-security concession locations;
- (d) Perform build out in one (1) new post-security “marche” concession location. The shell space for this new concession location will not include any walls and may include up to 4 concepts/brands;
- (e) Perform build out in one (1) new post-security shell space and open as one (1) new post-security concession location. The shell space for this new concession location will not include any walls; and
- (f) Perform build out in one (1) new pre-security shell space and open as one (1) new pre-security concession location.

We understand the timing of these closings, openings, and associated construction work will be further discussed and refined in the coming months, and will be subject to change as construction of the terminal expansion project progresses, but is anticipated to be generally as outlined on the attached Exhibit B.

Final Leased Premises: Thirteen (13) concession locations, as per the attached Exhibits A and B

Storage/office areas: to be determined

Concessionaire's Minimum

Capital Investment:

\$700/sf for food/beverage concessions; \$350/sf for retail concessions

Concessionaire's Minimum

Mid-term Refurbishment:

\$70/sf for food/beverage concessions; \$35/sf for retail concessions

Timing of Concessionaire's

Mid-term Refurbishments:

refurbishment of each unit to be completed within 90 days of the date that is: (a) 5 years after that unit's DBO, and (b) if the lease is still in force, again 10 years after that unit's DBO.

ACDBE Goal:

17%

Payments to Authority:

Monthly, the sum of (A) through (E), as follows:

(A) Concession Fee: the greater of:

- (1) the Minimum Monthly Guarantee ("MMG") as described below; or
- (2) a Privilege Fee equal to the sum of the following percentages of each concession unit's gross revenue:
 - (a) from the effective date of the new agreement until the closure of each existing concession unit, the same % of gross revenue as is specified in the existing concession agreement; and
 - (b) from the opening or reopening of each ultimate concession unit, the following percentage of each unit's gross revenue (to be specified in the new agreement for each concession, based on the category applicable to the concession):
 - Retail
 - Specialty retail stores: 15%
 - Convenience retail stores: 18% (except Grab and Go food and beverage items, which will be 12%)
 - Food/Bev
 - Table service restaurants: 12.5%
 - Counter service restaurants (QSR): 13%
 - Coffee/pastry shops: 16%
 - Walkaway/Grab and Go locations: 12%
 - Alcoholic beverages sold at any location: 18% (except sealed bottles sold at retail for consumption off-premises, which will be 15%)
 - Merchandise sold at any food/bev location: 22%

MMG will remain at 50 cents/EPAX (as under existing contract) until the first

DBO occurs for any one or more of Concessionaire's concession units. Thereafter, MMG will be increased to 55 cents/EPAX, subject to CPI increases at 2-year intervals, for the remainder of the term.

- (B) Rent for Storage and Office Areas (not within concession units): initial rent to be calculated at \$40/sf/year (then subject to CPI increases at 2-year intervals)
- (C) Building Service Fee (for each concession unit): initially \$0.60 per square foot (then subject to CPI increases at 2-year intervals)
- (D) CRDC Fees: upon completion of LCPA's construction of a Consolidated Receiving and Distribution Center (i.e. remote loading dock) as planned, LCPA may (a) elect to require Concessionaire to utilize it for receiving all shipments from off-airport; (b) hire a third party to operate it and provide distribution and delivery services for Concessionaire's goods to the airport terminal and/or concourses; and (c) pass through those costs of operation, including amortization and debt service from the construction of same (amortized on a straight line basis over 30 years), plus a markup for LCPA's overhead (not to exceed 15% for operational costs such as maintenance, operations, and insurance, and not to exceed 1.5% on amortization and debt service), to Concessionaire and any other concessionaires, via a monthly fee to be allocated amongst the concessionaires using the CRDC on a reasonable basis determined by LCPA, based upon the share of floor area, concession sales, or similar method.
- (E) Marketing Fee: a percentage of gross revenue to be determined by LCPA, but not to exceed 0.5%, commencing not less than 30 days prior to written notice by LCPA of its election to implement a marketing fee.

Marketing Fund: In the event LCPA, at its option, implements a marketing fee as set forth above, it will spend such funds collected from Concessionaire on advertising, marketing, and promotion of RSW concessions.

Concessions Handbook: LCPA plans to complete, and provide to Concessionaire, a Concessions Handbook, containing a compilation of procedures and requirements governing the operations and actions of concessionaires and their employees, representatives, contractors, and vendors, which will be incorporated into the concession lease.

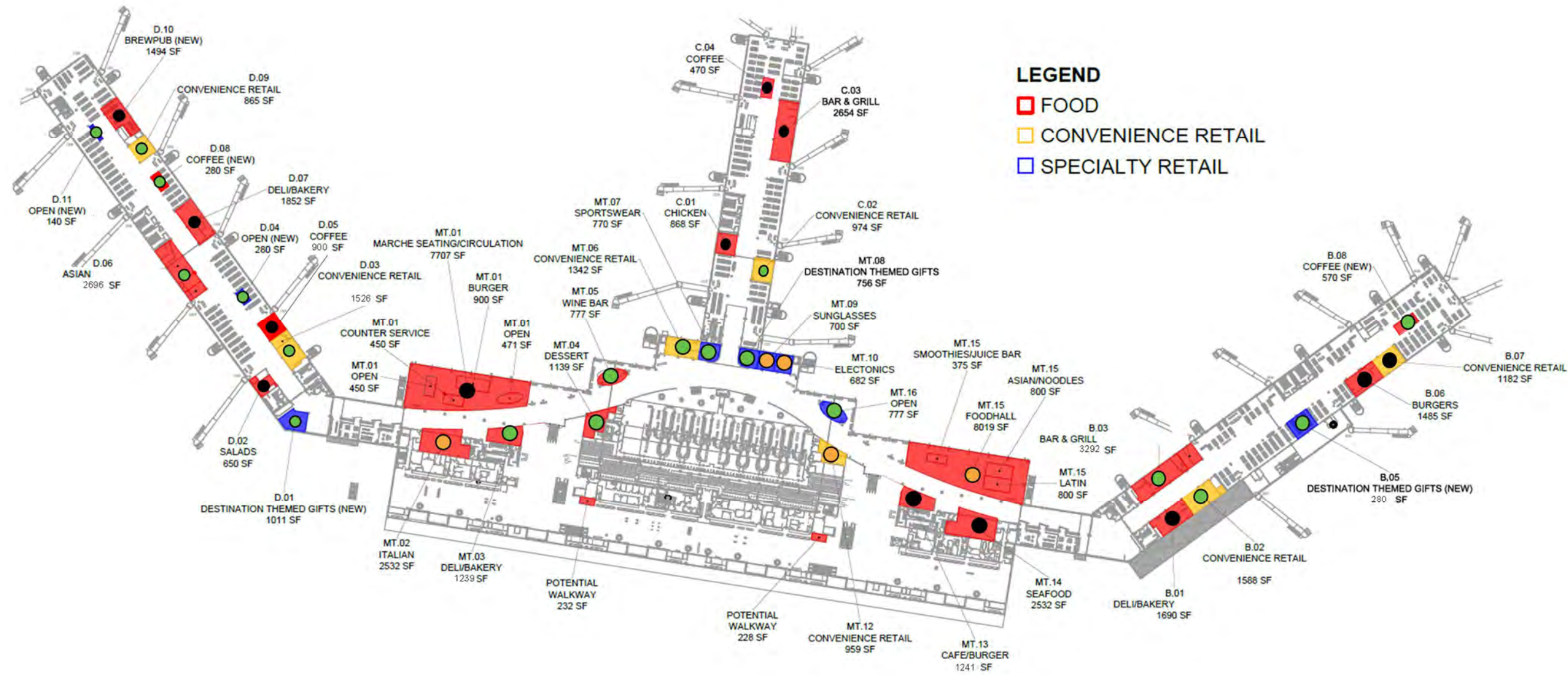
Pricing Standard: For merchandise with a pre-printed price affixed by the manufacturer or distributor, the selling price shall not exceed the pre-printed price.

For Concession Units represented off-airport within a 25 mile radius of the Airport, the selling price shall not exceed the selling price for the same products and services at the closest off-Airport establishment by more than ten percent (10%).

For Concession Units not represented off-airport within a 25 mile radius of the Airport, the selling price shall not exceed more than ten percent (10%) of the average selling price for similar or reasonably equivalent products and services at three comparable establishments located within a 25 mile radius of the Airport.

Completion of Negotiations: The parties aim to have a proposed lease agreement reduced to final written form, signed by Concessionaire and Guarantor, and delivered to LCPA no later than December 3, 2021, for scheduling of review of same by LCPA's ASMC and Port Board.

Exhibit A: Second Floor Terminal Diagram



LEGEND

- FOOD
- CONVENIENCE RETAIL
- SPECIALTY RETAIL

● Host
 ● Paradies
 ● Hybrid

Exhibit B (v6)

Host to close 8 existing Concession Units, perform demo and removal, remodel, and reopen as 6 new Concession Locations with New Concepts:								
Existing Brand	Existing Unit #	Location	New Unit #	Approx. Area (sf)	New Category	Tentative Projected Closing Date	Tentative Projected Opening Date	New Brand
Great American Bagel	B.5.A. and B.5.B.	Concourse B	B.01 (to also include existing airline lounge)	1,678	Counter Service - Deli/Bakery	May - July 2023	90 days after closing	TBD
Burger King	B.17.A.	Concourse B	B.06	1,474	Counter Service - Burgers	May - July 2025	90 days after closing	TBD
Dewar's Clubhouse	C.16.A and C.17.A	Concourse	C.03	2,670	Table Service - Bar & Grill	May - July 2026	180 days after closing	TBD
Starbucks	C-2	Concourse C	C.04	586	Counter Service - Coffee	May - July 2026	90 days after closing	TBD
Great American Bagel	D-1	Concourse D	D.02	650	Counter Service - Salads	May - July 2023	90 days after closing	TBD
Palm City Market	D.12.A.	Concourse D	D.07	1,852	Counter Service	May - July 2023	90 days after closing	TBD

Host to Close and Vacate 13 Existing Concession Units:			
Existing Brand	Existing Unit #	Location	Tentative Projected Closing Date
Nathan's	T-1	Main Terminal	10/1/2023
Quizno's		Main Terminal	10/1/2023
Jose Cuervo Tequila Bar	T-2	Main Terminal	10/1/2023
Starbucks	T.16.A.	Main Terminal	10/1/2023
Shula's Bar and Grill	T.16.B. and T.18.A.	Main Terminal	10/1/2023
Grab and Go Kiosk	B-1	Concourse B	12/1/2025
Beaches Boardwalk Café and Starbucks	B.4.B and B.6.B.	Concourse B	5/1/2025
Grab and Go Kiosk	C-1	Concourse C	12/1/2026
Great American Bagel	C.5.A. and C.6.A.	Concourse C	5/1/2023
Sbarro			
Starbucks	D.5.A.	Concourse D	5/1/2026
Casa Bacardi	D.11.A.	Concourse D	5/1/2025

Host to perform demo and removal in four (4) existing concession spaces currently occupied by another concessionaire, then build out and open as four (4) post-security Concession Locations with New Concepts:							
Existing Brand (operated by another concessionaire)	Existing Unit #	Location	New Unit #	New Approx. Area (sf)	New Category/Concept	Tentative Projected Turnover Date	Tentative Projected Opening Date
Beaches Travelmart, Dunkin' Donuts, and former Travelex	T-3	Main Terminal (currently pre security, but becomes post security)	MT.14	2,562	Table Service - Seafood	May - July 2025	180 days after turnover date
CNBC	B.18.A	Concourse B	B.07	1,182	Convenience Retail	May - July 2025	90 days after turnover date
The Shell Factory	C.7.A	Concourse C	C.01	871	Counter Service - Chicken	May - July 2025	90 days after turnover date
A Day At The Beach	D.6.A	Concourse D	D.03	914	Counter Service - Coffee	May - July 2026	90 days after turnover date

Host to build out and open one new post security "marche" Concession Location:						
Location	New Unit #	Approx. Area (sf) Subject to Final Design of LCPA's Terminal Expansion Project	Tentative Projected Turnover Date	Tentative Projected Opening Date	Concept	Brand
Main Terminal	MT.01	9,929 total sf to be split by concessionaire and approved by LCPA during the design review process	7/1/2024	180 days after turnover date	Counter Service - Burger	TBD
Main Terminal				180 days after turnover date	Counter Service	TBD
Main Terminal				180 days after turnover date	Open	TBD
Main Terminal				180 days after turnover date	Open	TBD

Host to build out and open one new post security Concession Location:						
Location	New Unit #	Approx. Area (sf) Subject to Final Design of LCPA's Terminal Expansion Project	Tentative Projected Turnover Date	Tentative Projected Opening Date	Concept	Brand
Concourse D	D.10	1,470	5/1/2022	180 days after turnover date	Table Service - Brewpub	TBD

Host to build out and open 1 new pre security Concession Locations:						
Location	New Unit #	Approx. Area (sf) Subject to Final Design of LCPA's Terminal Expansion Project	Tentative Projected Turnover Date	Tentative Projected Opening Date	Category/Concept	Brand
Main Terminal	MT.13	1,241	May - July 2024	90 days after turnover date	Counter Service - Café/Burger	TBD

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board approval to 1) enter into a purchase agreement with Allen Enterprises, Inc. for the supply and delivery of ADB Safegate Airfield Lighting and Related Airfield Parts on an as-needed basis to meet operational requirements at Southwest Florida International Airport and Page Field Airport. 2) Request board authorize the executive Director to exercise the option to renew the agreement for one additional two-year period at the same terms and conditions as the initial agreement.
2. **FUNDING SOURCE:** General Airport Operating Revenues collected during the normal operation of Southwest Florida International Airport, account WJ5300041200.504655 and account UH5120041203.504655 for Page Field Airport - Repairs and Maintenance – Parts for building and equipment maintenance.
3. **TERM:** Three-year term with one (1) additional two-year renewal period.
4. **WHAT ACTION ACCOMPLISHES:** Provides the Authority the ability to secure airfield lighting and related airfield material, lighting control components, software and training on an as-needed basis to ensure operational requirements at Southwest Florida International Airport and Page Field are met. The agreement is for an initial three (3) year term not to exceed \$900,000 with an option to extend up to one (1) additional two-year renewal not to exceed \$600,000.

5. **CATEGORY:** 31.
Administrative Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
 CONSENT
 ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Steve Hennigan

DIV. Aviation

10. **BACKGROUND:**

The airfield lighting components for the runway, taxiway, and apron lighting at RSW and FMY are manufactured exclusively by ADB Safegate Americas, LLC (previously ADB Airfield Solutions) and distributed by Allen Enterprises, Inc. Allen Enterprises, Inc. is the exclusive representative for ADB Safegate Americas, LLC and the sole provider for all ADB manufactured components distributed throughout the Southeast United States, including Florida. ADB Airfield Solutions was selected to furnish airfield lighting components for the runway rehabilitation project of 2005-2007. RSW has purchased airfield lighting components exclusively through Allen Enterprises, Inc. since the project was commissioned in 2007. Similarly, with the conclusion of the most recent airside rehabilitation projects at FMY, FMY also is exclusively an

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Steven P. Hennigan</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<i>Benjamin R. Siegel</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)

ADB-dependent airport. ADB Safegate products are manufactured to FAA specifications and certified by Edison Testing Laboratories (ETL).

The expenditures for ADB airfield lighting and electrical components between RSW and FMY are not to exceed \$900,000 during the three year term and \$600,000 during the two year option timeframe. This accounts for FAA Advisory Circular revisions and any weather related events that may cause damage to the lighting.

The Lee County Port Authority's Purchasing Department has qualified Allen Enterprises, Inc. as the sole source provider of ADB Safegate Americas, LLC airfield lighting and components and provided a Written Notice of Determination for Sole or Single Source vendor status. LCPA Maintenance at RSW and FMY has and will continue to purchase ADB airfield lighting components and accessories as 99% of the airfield electrical lighting, guide-sign components, lighting controls, and constant current electrical regulator equipment at both airports are standardized to ADB Airfield Solutions, LLC products. The pricing in the service provider agreement offers a 3% discount from the list price, which is consistent with ADB's agreement with Orlando International Airport.

Staff recommends the Board approve the Sole Source Service Provider Agreement of an initial three-year term, which includes an option to extend the agreement for one additional two-year extension term at the discretion of the Authority and Executive Director.

Attachments:

- (1) Service Provider Agreement
- (2) Sole Source Determination Letter

Contract No. _____
Vendor No. _____

LEE COUNTY PORT AUTHORITY

ADB SAFEGATE AIRFIELD LIGHTING AND RELATED AIRFIELD PARTS

AGREEMENT

This ADB SAFEGATE AIRFIELD LIGHTING AND RELATED AIRFIELD PARTS AGREEMENT ("Agreement") is entered this ____ day of _____, 2021, 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 ALLEN ENTERPRISES, INC., a Florida corporation, authorized to do business in the State of Florida, ("Provider"), at 5659 Commerce Drive, Suite 100, Orlando, Florida, 32839, Federal Identification Number 59-2259870.

WITNESSETH

WHEREAS, Authority has standardized airfield lighting and related airfield parts in order to ensure and maintain conformance with FAA requirements and desires to obtain parts from Provider as described below for the Southwest Florida International Airport ("RSW") and Page Field ("FMY") in Fort Myers, Florida; and,

WHEREAS, Provider is the exclusive representative for ADB Safegate lighting and the sole provider for all ADB Safegate product offerings in the southeast United States. Lee County Port Authority standardized our airfield lighting to ensure and maintain conformance with FAA specifications due to standardization; and,

WHEREAS, the Authority has issued a single source written determination that there is only one authorized source for the purchase of ADB airfield lighting and related airfield parts; and,

WHEREAS, the Authority desires to establish a source of supply for the as needed acquisition of airfield lighting and airfield related parts at fixed pricing in order to meet the operational needs of the Authority; and, .

WHEREAS, Provider certifies that it has been granted and possesses valid and will maintain 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 parts to be provided under this Agreement; and,

WHEREAS, Provider agrees to provide the items described herein to the Authority in accordance with 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 SCOPE OF WORK

Provider hereby agrees to provide the products set forth in Exhibit A attached to this Agreement, entitled "Scope of Work", which is merged into and incorporated by reference as part of this Agreement. Provider agrees to perform in strict accordance with the Scope of Work outlined in Exhibit A and this Agreement.

Provider will fulfill product orders as directed by the Authority per written order request emailed to Provider by the Authority.

2.0 TERM OF AGREEMENT

The term of this Agreement begins on the Effective Date and will continue for three (3) years. The Authority will have the option to extend the term of this Agreement, upon consent of Provider and upon the same terms and conditions, including prices for one (1) additional two (2) year term. The agreement will automatically renew unless the Provider gives notice of its intent not to renew at least thirty (30) days prior to the expiration of the current term.

3.0 DEFINITIONS

- 3.1 Authority - Lee County Port Authority and its governing Board of Port Commissioners and all officials and employees.
- 3.2 Provider - Allen Enterprises, Inc. the exclusive representative and sole provider in the southeastern United States of ABD Safegate lighting products who is legally obligated, responsible, and liable for furnishing any and all of the work and materials, including the work of subcontractors, as approved, required under the provisions, covenants and terms of this Agreement.
- 3.3 Additional Parts - Any Additional Part that the Authority may request from Provider and authorize, in writing, and which are not specifically included in Exhibit B, Authority Price List.

4.0 OBLIGATIONS OF PROVIDER

Provider agrees to furnish all airfield lighting parts and related accessories under this Agreement in accordance with this Agreement including all exhibits and generally accepted standards of practice within Provider's industry and the laws, statutes, ordinances, codes, rules, regulations, and requirements of any federal or state authority or governmental agency that regulates or has jurisdiction over the items to be furnished by Provider.

Provider agrees to be responsible for the quality, timely delivery, and the coordination of all items to be provided under this Agreement. Provider will, without additional compensation, correct or revise any errors, omissions, or other deficiencies in work and materials resulting from the negligent act, errors or omissions or intentional misconduct of the Provider or Provider's

employees or subcontractors. Neither the Authority's review, approval or acceptance of, nor payment for, as applicable, any part of Provider's materials will be construed to operate as a waiver of any of the Authority's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

5.0 INDEMNIFICATION

- 5.1 Indemnification - General - Provider agrees to indemnify, hold harmless and, not excluding the Lee County Port Authority's right to participate, defend the Authority and Lee County, Florida, and their respective officers, officials, agents and employees from and against all liabilities, claims, actions, direct and verifiable damages, direct and verifiable losses, and direct verifiable and reasonable expenses, including without limitation reasonable outside attorneys' fees and reasonable costs, (hereinafter referred to collectively as claims) for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or part, by the negligent or willful acts or omissions of Provider or any of its owners, officers, directors, agents, employees or subcontractors.

This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of Provider to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Authority and Lee County will, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Authority and Lee County, be indemnified by Provider from and against any and all claims. Provider will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, Provider agrees to waive all rights of subrogation against the Authority, its officers, officials, agents and employees for losses arising from the work performed by Provider for the Authority.

Provider understands and agrees that by entering into this Agreement, the Authority does not waive its sovereign immunity and nothing herein will be interpreted as a waiver of the Authority's rights, including the limitation of waiver of immunity in section 768.28, Florida Statutes or any other statutes, and the Authority expressly reserves these rights to the fullest extent allowed by law.

- 5.2 Indemnification - Infringement of Intellectual Property Rights - Provider will defend, indemnify and hold harmless Authority and Lee County, Florida, and their respective agents and employees, from and against all claims, damages, losses and expenses arising out of or resulting from the claim that any deliverable associated with items provided under the contract constitute an infringement or misappropriation of any Intellectual Property Right (including but not limited to copyrights, trademarks, trademark rights, service marks, trade names, patents, patent rights, licenses trade secrets or other proprietary rights not secured by the

Provider) of a third party resulting from or arising in connection with the manufacture, sale, normal use or other normal disposition of any article or material furnished under this Agreement.

Provider will further be solely responsible for clearing the right to use any patented or copyrighted material in the performance of this Agreement. Provider warrants that any software modified through the services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret from any third party.

In the event of any claim by any third party against the Authority, the Authority will promptly notify Provider and Provider will defend any such claim, in the Authority's name, but at Provider's expense or liability, including but not limited to attorney's fees and disbursements arising out of such claim.

6.0 COMPENSATION AND METHOD OF PAYMENT

6.1 Authority Price Sheet - Authority will pay Provider in accordance with the Authority Price Sheet set out in Exhibit B, attached and made part of this Agreement. Pricing will be held firm for the term of the Agreement. In the event of significant escalation or de-escalation in unit pricing, adjustments to the pricing set forth in Exhibit B, Authority Price Sheet, may be made. Consideration for pricing adjustments will be determined annually in advance of the renewal date and will be effective on the first day of the renewal. Increases are not to exceed 3% and must be justified in writing by the manufacturer and approved by the Authority.

As deemed necessary, Authority reserves the right to order airfield lighting and related airfield parts not listed on Exhibit B throughout the term of this Agreement. The price for those Additional Parts will be confirmed and agreed to in writing by the Parties at either the established discounted rate of 3% off of manufacturer's list price or at Provider's cost plus markup acceptable to the Authority if the requested Additional Parts are not included in the Provider's catalog at the time of the inquiry. Such Additional Parts will constitute a continuation of the parts covered under this Agreement and will be furnished and performed in accordance with the provisions, covenants, and terms as set forth in this Agreement. The mutually agreed upon price for such Additional Parts will be reviewed and adjustments may be made to Exhibit B annually on the renewal date.

6.2 Invoice - Provider will invoice the Authority per order request received for the parts described in Exhibit B, as provided for herein on the Effective Date and during the term of this Agreement.

Each invoice must be accurate and will include: (i) the Contract Purchase Order number; (ii) individual itemization of the parts with brief description; (iii) part number; (iv) unit price from Authority Price Sheet; (v) quantity ordered, back

ordered and shipped; (vi) total price; (vii) an invoice number and date; (viii) ordering department's name and "ship to" address; and (ix) agreed upon payment terms listed in this Agreement.

6.3 Payment Schedule - The Authority will issue payment to Provider for parts accepted under this Agreement within forty-five (45) calendar days after receipt of an invoice from Provider that is in an acceptable form.

6.4 With the exception of parts under the change order process, the Authority's total liability for all charges for parts which may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Authority purchase order(s) to Provider.

7.0 INDEPENDENT CONTRACTOR

7.1 Nothing contained in this Agreement will constitute or be construed to create a partnership or joint venture between the Authority and Provider or its employees, agents, subcontractors, successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Provider is acting and performing as an independent contractor, duly authorized to perform acts required of it hereunder, and is not an agent of the Authority.

7.2 The Authority may, at its sole discretion and its sole expense, award any additional work to any third party, or such work may be performed by Authority employees. Provider will be expected to cooperate with any or all contractors who may be performing work in the designated work area.

8.0 SUBCONTRACTS AND ASSIGNMENT OR TRANSFER

Except in the event of a merger or acquisition, or in the assignment to a parent or subsidiary, Provider may not assign or transfer any of its rights, benefits or obligations under the Agreement without prior written approval of the Authority. Assignment of this Agreement or performance of any work by a subcontractor will not be allowed without the prior written consent of the Authority.

9.0 TERMINATION

This Agreement may be terminated by the Authority for convenience by giving sixty (60) days written notice to Provider.

The Provider may request this Agreement be terminated by submitting a written notice to the Authority dated not less than ninety (90) calendar days prior to the requested termination date, and will state the reason for such a request. However, the Authority reserves the right to accept, or not accept, the termination request submitted by the Provider, and no such termination request submitted by Provider will become effective until Provider is notified, in writing, by the Authority of its acceptance.

10.0 PROVIDER AN INDEPENDENT CONTRACTOR

Provider is an independent contractor and is not an employee or agent of the Authority. Nothing in this Agreement will be interpreted to establish any relationship other than that of an independent contractor between the Authority and Provider, its employees, agents, subcontractors, or assigns, during or after the performance of this Agreement. Nothing in this Agreement may 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.

11.0 F.A.A. NON-DISCRIMINATION CLAUSE

Provider, for itself, its successors in interest, and assigns, as part of the consideration hereof, agrees that it will not discriminate on the basis of race, color, national origin, sex, disability or other protected factor in the performance of this contract. Provider will carry out applicable requirements of 49 CFR Part 23 and Part 26 in the award and administration of DOT-assisted contracts. Provider's failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Authority deems appropriate.

12.0 NOTICE REGARDING PUBLIC ENTITY CRIMES

In accordance with Section 287.133(2)(a), Florida Statutes, 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, proposal, or reply on a contract to provide any parts to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 s. 287.017 for Category Two for a period of 36 months following the date of being placed on the convicted vendor list.

13.0 NO THIRD PARTY BENEFICIARIES

Nothing in this Agreement or the incorporated documents will create any relationship, contractual or otherwise, with, or any rights in favor of, any third party.

14.0 GOVERNING LAW

This Agreement will be interpreted, construed and governed by the laws of the State of Florida. Exclusive venue for any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement will be in the Circuit Court of Lee County, Florida. The prevailing party in any such suit or action will be entitled to recover its reasonable outside attorneys' fees and court costs, including any appeals.

15.0 PROHIBITED INTERESTS

No member, officer or employee of the Authority or of the locality during his or her tenure or for one year thereafter will have any interest, direct or indirect, in this contract or the proceeds thereof.

16.0 E-VERIFY CLAUSE

Provider certifies that it has registered and is using the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program and is eligible to enter this Agreement. Provider further agrees to provide the Authority with proof of such registration within thirty (30) days of the date of this Agreement.

Provider agrees to use the E-Verify Program to confirm the employment eligibility of:

1. All persons employed by Provider during the term of this Agreement.
2. All persons, including contractors and subcontractors, assigned by the Provider to perform work or provide services or supplies under the Agreement.

Provider further agrees that it will require each contractor or subcontractor performing work or providing services or supplies 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.

17.0 NOTICES AND ADDRESS

All notices required and/or made pursuant to this Agreement will be in writing and will be given by the United States Postal Service, to the following addresses of record:

If to the Authority:

LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Attention: Airport Executive Director

If to the Provider:

Allen Enterprises, Inc.
5659 Commerce Drive, Suite 100
Orlando, Florida, 32839
Attention: Keith Meese

18.0 AMENDMENTS AND MODIFICATIONS

- 18.1 The terms and provisions of this Agreement may be amended, in writing, by the Agreement of both parties. In the event of any conflicts between the requirements, provisions, and/or terms of the Agreement and any written Amendment(s), the requirements, provisions and/or terms of the latest executed

Amendment(s) will take precedence.

18.2 Modifications to the terms and provisions of this Agreement will only be valid when issued in writing as a properly executed Amendment, and approved with the same formality as the initial Agreement. In the event of any conflicts between the requirements, provisions and/or terms of this Agreement and any written Amendment, the latest executed Amendment will take precedence.

19.0 HEADINGS

The headings of the Sections in this Agreement are for the purpose of convenience only and will not be deemed to expand, limit or change the provisions contained in such Sections.

20.0 ENTIRE AGREEMENT

This Agreement, including the referenced Exhibits which are all incorporated as part of this Agreement, constitutes the entire Agreement between the parties and supersedes all prior agreements or understandings, written or oral, relating to the matters contained in the Agreement.

[Remainder of Page Intentionally Left Blank]

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

ATTEST: LINDA DOGGETT
Clerk of the Circuit Court

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chair or Vice Chair

Approved as to Form for the Reliance of Lee
County Port Authority Only:

By: _____
Port Authority Attorney's Office

Signed, Sealed and Delivered

ALLEN ENTERPRISES, INC.

Witness

Authorized Signature for Provider

Witness

By: Keith Meese
Printed Name

SEAL

Corporate Secretary
Title

SCOPE OF WORK

1.0 INTENT:

It is the purpose and intent of this Agreement to establish an ongoing source of supply for airfield lighting and airfield related parts at fixed pricing in order to meet the ongoing operational needs of the Authority based on actual needs of the Authority, as determined by the Authority and to establish pricing for the provision of on-site training to be performed as requested by the Authority.

Provider will furnish all labor, supervision, materials, tools, equipment, supplies and all other items necessary for, or incidental to, the timely delivery of airfield lighting and related parts as specified herein on an as-needed basis as determined by the Authority.

The estimated annual cumulative expenditure between FMY and RSW could range anywhere from eighty thousand (\$80,000) to three hundred ten thousand (\$310,000). These fluctuations are driven by various contributing factors to include but not limited to weather (lightning), airport projects, new regulations, and other incidents.

2.0 PARTS:

The Provider will provide the parts identified and described in Exhibit B, Authority Price Sheet attached hereto and made a part of this Agreement.

If deemed necessary, Authority reserves the right to order airfield lighting and related airfield parts not specifically listed on Exhibit B throughout the term of this Agreement. Pricing for such Additional Parts will be confirmed and agreed to in writing by the Parties at either the established discounted rate of 3% off of manufacturer's list price or at Provider's cost plus markup acceptable to the Authority if the requested Additional Parts are not included in the Provider's published catalog at the time of the inquiry.

The mutually agreed upon price for such Additional Parts will be included in Exhibit B annually on the renewal date.

3.0 ORDER AND DELIVERY:

The Authority will issue written order requests using item information in Exhibit B, Authority Price Sheet, on an as-needed basis. The Provider will fill orders that are placed by the Authority as further described below.

All items will be delivered FOB Destination; freight prepaid and delivered to the Authority before 3:00 p.m., at the Southwest Florida International Airport, 15920 Air Cargo Lane, Fort Myers, Florida 33913 or at Page Field, 4682 Terminal Drive, Fort Myers, FL 33907.

Provider retains title and assumes all transportation charges, responsibility, liability and risk in transit, and will be responsible for the filling of claims for loss or damages.

All pallets supplied shall be non-returnable, no deposit.

Provider will make every effort to fulfill and deliver orders for stocked items within fifteen (15) calendar days from the date order is placed by the Authority.

Provider will make every effort to fulfill and deliver orders for backordered items within thirty (30) calendar days from the date order is placed by the Authority.

Provider will supply Authority with pre-paid shipping materials and accept returns for damaged or defective items.

Provider is required to make available live customer support during normal business hours year round.

4.0 SHIPPING, TAXES, and OTHER CREDITS and CHARGES:

The Provider will not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Provider will comply with the delivery terms specified herein. The Authority is generally a tax-exempt entity subject to applicable provisions of Florida law regarding sales tax. The Provider is responsible for complying with the Florida sales and use tax laws as may apply. The amount(s) of compensation set forth in this Agreement, or in any amendments authorized pursuant to this Agreement, will be understood and agreed to include any and all Florida sales and use tax payment obligations required by Florida law.

5.0 AUTHORITY'S ACCEPTANCE OF DELIVERED ITEMS:

Delivered items will not be considered accepted until the Authority has, by inspection or test of all items, determined the items are correct and undamaged. The Authority's failure to accept or reject parts will not relieve Provider from its responsibility for such parts that are defective or do not meet specifications nor impose liability on Authority for such parts. If any part of the parts are not acceptable to Authority, Authority may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the parts at Provider's expense; or reject and return the parts at Provider's cost. Any rejected parts are not to be replaced without written authorization from Authority, and any such replacement will be on the same terms and conditions contained in this Agreement.

6.0 WARRANTY

The Provider will fully warrant all items furnished under the Agreement against defects in materials and workmanship for a period of twelve (12) months from the date of acceptance by the Authority. Should any defect in materials or workmanship, excluding ordinary wear and tear, appear during the above stated warranty period, the Provider will repair or replace the defective item at no cost to the Authority, immediately upon written notice from the Authority.

The Provider will accept OEM ADB Safegate American, LLC airfield lighting parts and related airfield parts returned by the Authority in sellable conditions within seventy-two (72) hours for the actual delivery or pick up date.

The Provider further warrants, for a period of twelve (12) months, to replace any airfield lighting parts and related airfield parts that develop performance related defects during the warranty period at no cost to the Authority.

The Provider will be fully responsible for any and all warranty work, regardless of third-party warranty coverage.

7.0 POINT OF CONTACT

The Point of Contact Administrator for Southwest Florida International Airport is the Supervisor of Airfield Maintenance. The Point of Contact Administrator for Page Field is the Programs Specialist. The Point of

Contact for Provider is the Corporate Secretary.

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DRAFT

EXHIBIT B

AUTHORITY PRICE SHEET

LEE COUNTY PORT AUTHORITY PRICE SHEET				
DISCOUNT PRICE INCLUDES ALL FREIGHT COST				
LCPA Item Number	Vendor Item Code	Item Description	Supplier List Price	3% Discount
0101006	60C2039/1	RM3 14" COLUMN	\$ 15.28	\$ 14.82
0101035	77A0107	WINDSOCK 36" X 12' STR NYLON	\$ 155.02	\$ 150.37
0101040	77A0106	WINDSOCK 18" X 8' LITE NYLON	\$ 73.73	\$ 71.52
0101049	44B0348	STAKE ASSEMBLY	\$ 110.09	\$ 106.79
0101050	63A0149	L-861 RED LENS	\$ 33.96	\$ 32.94
0101051	63A0148	L-861 RED/GREEN LENS	\$ 79.89	\$ 77.49
0101055	63A0151	L-861 BLUE LENS	\$ 30.53	\$ 29.61
0101060	63A0141	L-861 CLEAR LENS	\$ 28.35	\$ 27.50
0101064	63A0147	L-861 GREEN/OBS LENS	\$ 87.29	\$ 84.67
0101070	63A0157	L-861 RED/BLUE LENS	\$ 172.78	\$ 167.60
0101085	63A0142	L-861 CLEAR/YELLOW LENS	\$ 79.89	\$ 77.49
0101155	62A2142	SIGN FLOOR FLANGE 2-BOLT SIG S	\$ 14.07	\$ 13.65
0101160	62A0007/11	11" COLUMN	\$ 19.69	\$ 19.10
0101163	62A0007/8	6.5" COLUMN L-862Q	\$ 23.61	\$ 22.90
0101165	62A0007/5	5" COLUMN	\$ 10.75	\$ 10.43
	62A0007/6	6" COLUMN	\$ 6.74	\$ 6.54
0101170	62B0073	1 1/2" FRANGIBLE CPLG	\$ 9.90	\$ 9.60
	62B0107-2	SIGN FLOOR FLANGE 2-BOLT SIG S	\$ 19.51	\$ 18.92
0101205	47A0016	15A 250V FAST FUSE	\$ 3.20	\$ 3.10
0101223	O2124Q	L-867B 12X24" BASE GROMMET@0 &	\$ 304.80	\$ 295.66
0101224	O2052	L-867B GASKET	\$ 11.31	\$ 10.97
0101225	44B1079/11	HEAD ASSY FOR L861I 14"	\$ 94.01	\$ 91.19
0101243	35A0578	L-830-16 TX 10/15W 6.6/6.6A	\$ 129.32	\$ 125.44
0101245	35A0224	L-830-14 TX 500W 6.6/6.6A	\$ 311.47	\$ 302.13
0101250	35C0086	L-830-10 TX 300W 6.6A/6.6A	\$ 306.45	\$ 297.26
0101255	35C0082	L-830-6 TX 200W 6.6A/6.6A	\$ 222.48	\$ 215.81
0101260	35C0080	L-830-4 TX 100W 6.6A/6.6A	\$ 177.98	\$ 172.64
0101266	35C0077	L-830-1 TX 30/45W 6.6/6.6A	\$ 145.56	\$ 141.19
0101291	62B0269	CABLE SUPPORT	\$ 10.43	\$ 10.12
0101292	62B0268/1	THREADED STAKE HUB	\$ 19.61	\$ 19.02
0101295	49A0002	LAMP SOCKET SERIES	\$ 38.34	\$ 37.19
0101302	44A6102	FIELD LIGHTNING ARRESTOR	\$ 601.78	\$ 583.73
0101422	73A0009/31	31" CORD SET	\$ 17.65	\$ 17.12
0101426	1475.92.030	SCO PLUG CUTOUT	\$ 703.19	\$ 682.09
0101480	44C1202/1	L-862Q C/C LENS ASSY	\$ 294.08	\$ 285.26
0101481	44C1203/1	L-862Q POP TOP HEAD ASSY	\$ 184.98	\$ 179.43
0101486	61B0147	INNER FILTER RETAINER	\$ 29.07	\$ 28.20
0101487	63B0415/1	L-862Q CLEAR INNER LENS	\$ 17.98	\$ 17.44
0101488	63B0415/3	L-862Q RED INNER FILTER	\$ 21.37	\$ 20.73
0101489	63B0415/4	L-862Q GREEN INNER FILTER	\$ 21.37	\$ 20.73
0101498	63A0993/3	PRISM L850C NARR BM F-RANGE	\$ 69.97	\$ 67.87
0101499	4071.50.030	F-RANGE PRISM SLEEVE GASKET	\$ 6.14	\$ 5.96
0101500	63A0986	PRISM FLAT SEAL F-RANGE (OLD PN	\$ 2.44	\$ 2.37

		4071.50.042)		
0101507	49A0063	BI-PIN SOCKET	\$ 11.51	\$ 11.16
0102030	48A0006	30W 6.6AT10/1P LAMP	\$ 9.66	\$ 9.37
0102035	48A0007	45W 6.6AT10/P LAMP	\$ 9.66	\$ 9.37
0102065	48A0017	200W VASI Q6.6A/PAR64/2P	\$ 61.74	\$ 59.89
0102105	2990.40.900	105W 6.6A FRANGE LAMP	\$ 27.38	\$ 26.56
0102116	48A0010	116W A21/TS 120V LAMP	\$ 5.88	\$ 5.70
0102130	44A5911	30W 6.6A MR16 FTD	\$ 31.24	\$ 30.30
0102131	48A0085	30W EXL QUARTZ LAMP	\$ 13.18	\$ 12.78
0102145	48A0083	45W EXM QUARTZ LAMP	\$ 13.18	\$ 12.78
0102146	2990.48.360	45W 6.6A L852A/C FRANGE LAMP	\$ 32.46	\$ 31.49
0102148	2990.40.827	48W 6.6A SIG. SERIES LAMP	\$ 17.47	\$ 16.95
0111001	63A0985	FILTER, GREEN FTS	\$ 17.88	\$ 17.34
0111005	63A0963	FILTER, GREEN F-RANGE	\$ 23.93	\$ 23.21
0111006	63A0964	YELLOW FILTER "F" RANGE	\$ 23.29	\$ 22.59
0111009	4071.50.160	FILTER SPRING F-RANGE	\$ 1.59	\$ 1.54
0111011	OCEC	CEC LOCKWASHER PAIR	\$ 3.10	\$ 3.01
0111014	63A0979/3	PRISM F-RANGE WIDE BEAM G-S-GS (OLD PN 63A0979/1)	\$ 56.09	\$ 54.41
0111020	44A6112/1	TERMINAL BLOCK ASSY F-RANGE	\$ 11.15	\$ 10.82
0111104	62A2155	ETEL/ETES LOCKING RING	\$ 12.58	\$ 12.20
0111105	63B0267/226	O RING SILICONE L861T LED	\$ 2.29	\$ 2.22
0111121	44A7163/010E	LED, BLUE 1W, W/O HT USED IN E	\$ 45.74	\$ 44.37
0111125	44A6334S	ETES GLASS ASSY BLUE WITH LOCK	\$ 58.22	\$ 56.47
0111132	44A7177/10	ITEL OPTICAL ASSY BLUE 300MA	\$ 92.87	\$ 90.08
0111133	44A7197/60/0	ITEL LED PWR SUPPLY PCB ASSY W	\$ 140.41	\$ 136.20
0111134	63A1071	ITEL PRISM LENS	\$ 25.92	\$ 25.14
0111138	4071.76.041	LENS GASKET L-852T, L861LED	\$ 4.76	\$ 4.62
0111139	4071.76.060	L852T LENS GASKET PROTECTION	\$ 3.30	\$ 3.20
0111204	4072.00.181	LED L852 GASKET PRISM	\$ 4.94	\$ 4.79
0111221	48A0400/YLW	ITCF NARROW BM LED LIGHT ENGI	\$ 103.14	\$ 100.05
0111224	48A0444/YLW/300MA	ITCF, LED, YELLOW, NARROW BEAM	\$ 110.52	\$ 107.20
	44A7292/00/1	L-850A, L852 LED PCB, PS, 1-CH, 1-CORDSET	\$ 401.03	\$ 389.00
0111225	44A7292/00/2	L-850A, L852 LED PCB, PS, 2-CH, 1-CORDSET	\$ 401.03	\$ 389.00
0111226	48A0444/GRN/280MA	ITCF, LED, GREEN, NARROW BEAM	\$ 85.51	\$ 82.94
0112004	44A6009/0021	L-850C (2) 105W W/W F-RANGE	\$ 775.70	\$ 752.43
0112005	44A6009/0121	L850C (2) 105W W/Y 1CS W/O FD	\$ 798.68	\$ 774.72
0112006	44A4817/1231	L-850A F-RANGE C/C (2) 48W	\$ 709.40	\$ 688.12
0112007	44A4817/2231	L-850A F-RANGE C/R (2) 48W	\$ 747.27	\$ 724.85
0112008	44A4763/231	L-850B F-RANGE 48W TOED LEFT	\$ 720.28	\$ 698.67
0112009	44A4763/221	L-850B F-RANGE 48W TOE RIGHT	\$ 720.28	\$ 698.67
0112010	ITEL/C110	L-852T BLUE LED FIXTURE 11.25"	\$ 515.46	\$ 500.00
0112011	ITCF/B20302	L-852B LED, G-G, 1 CDST, 12"	\$ 891.09	\$ 864.36
0112014	44C1081/1511	L-861T 30WI, BLUE 14" FIXTURE	\$ 167.11	\$ 162.10
0112015	44A4765/3232	L-852B/D Y/G FRANGE (2) 30W 1C	\$ 512.07	\$ 496.71
0112016	44A4765/5232	L-852B/D G/O WOFD 1CS 30W	\$ 388.11	\$ 376.47
0112017	44A4765/6232	L-852B/D Y/O WOFD 1CS 30W	\$ 387.56	\$ 375.93
0112019	44A4765/1232	L-852B/D Y/Y WOFD 1C STB 30W	\$ 512.89	\$ 497.50
0112020	44D1442/2112	L-852E YELLOW 45W 11.25" B.C.	\$ 1,457.41	\$ 1,413.69

0112021	44D1442/2132	L-852E BLUE 45W 11.25" B.C.	\$ 1,458.59	\$ 1,414.83
0112022	44A4764/2232	L-852A/C GG FRANGE (2) 30W 1CS	\$ 461.02	\$ 447.19
0112023	44A4765/2232	L-852B/D G/G F-RANGE (2) 30W 1	\$ 512.64	\$ 497.26
0112029	ITEL/8110	ITEL L852T LED YELLOW 11.25" B	\$ 521.71	\$ 506.06
0112032	ITCF/B30302	L-852B LED, Y-G, 1 CDST, 12"	\$ 891.93	\$ 865.17
0112033	ITCF/B60302	L-852B LED, Y-O, 1 CDST, 12"	\$ 761.62	\$ 738.77
0112034	ITCF/B10302	L-852B LED, Y-Y, 1 CDST, 12"	\$ 904.02	\$ 876.90
0112035	ITCF/B50302	L-852B LED, G-O, 1 CDST, 12"	\$ 760.79	\$ 737.97
0113008	60A2653	SIGN LAMP COVER FOR SIG SERIES	\$ 9.15	\$ 8.88
0113009	63A0988/21	SIGN MIRROR SZ2 END-END	\$ 14.39	\$ 13.96
0113010	63A0988/22	SIGN MIRROR SZ2 END-INTER.	\$ 17.42	\$ 16.90
0113011	61A0335/1	PANEL FASTNER 1 PC. PUSH TYPE	\$ 0.28	\$ 0.27
0113012	63A1004	SIGN PRISM DIFFUSER	\$ 5.10	\$ 4.95
0113013	73A0108/6	EXT CORD 6' 16/2 SOW	\$ 57.79	\$ 56.06
	73A0108/8	L-823 EXT CORD 8' STYLE 1 & 7	\$ 64.73	\$ 62.79
0113501	44A7260/010	LED SIGN POWER SUPPLY ASSY FOR LIGHT BAR CURRENT DRIVEN BOOST	\$ 329.68	\$ 319.79
	48A0442/16	LED SIGN LIGHT BAR GEN 2, 16" FOR SIZE 1&4	\$ 201.91	\$ 195.85
	48A0442/24	LED SIGN LIGHT BAR GEN 2, 24" FOR SIZE 2	\$ 214.54	\$ 208.10
0113502	48A0442/32	LED SIGN LIGHT BAR GEN 2, 32" FOR SIZE 2	\$ 223.04	\$ 216.35
0113503	60A2678/30	FRANGIBLE CPLG, L-858, SZ3/5, SIG SERIES SIGN	\$ 22.74	\$ 22.06
0114002	44B1780/4	TRIGGER TRANSF. L-849 REIL	\$ 263.08	\$ 255.19
0114003	44B1105	TRIGGER INTERFACE PCB	\$ 244.91	\$ 237.56
0114004	44B1157	L-849E MASTER OSCILLATOR BRD	\$ 749.75	\$ 727.26
0115001	HB0200-0013	BALLAST 400W PULSE START, CAP	\$ 385.43	\$ 373.87
0115002	HB2500-0007	GEAR HEAD ONLY HBM 250, 400	\$ 281.77	\$ 273.32
0115003	HB4100-0014	MOTOR AND CAPACITOR HBM 250, 4	\$ 350.41	\$ 339.90
0115004	HB1800-0000	MERCURY COUPLING FOR N36, WIND	\$ 177.42	\$ 172.10
0115005	HB0600-0003	BELT, DRIVE HBM SERIES	\$ 24.52	\$ 23.78
0115007	HB5000-0005	PULLEY, MOTOR HBM	\$ 77.87	\$ 75.53
0116001	44A6683/1	L-804 LED RGL PCB ASSY CURRENT	\$ 779.25	\$ 755.87
0116002	44A5857	PAPI B LAMP DRIVER/TILT PCB	\$ 610.92	\$ 592.59
0117001	44A6683/9	PCB LED PS, ASSY CURRENT INT W	\$ 612.26	\$ 593.89
0117005	44A6786	LED WINDCONE LIGHT ENGINE ASSY	\$ 364.51	\$ 353.57
0117010	HB9200-0040	REPLACEMENT LED SIZE 2 INTERNA	\$ 1,833.54	\$ 1,778.53
0151001	44A6546/KIT	PCB ASSY,LC, CCT CONTROL	\$ 820.28	\$ 795.67
0151002	44A6397	ACE IRMS PCB ASSY	\$ 645.87	\$ 626.49
0151003	44A7078	ACE II MAIN CTRL PCB, I/O ACE	\$ 1,223.68	\$ 1,186.97
0151004	44A6377	ACE II MAIN CONTROL PCB	\$ 1,119.31	\$ 1,085.73
0151005	44A4802/1	PCB ASSY ACE LOM 1-CHANNEL	\$ 584.48	\$ 566.95
0151006	44A4802/2	PCB ASSY ACE I/II LOM 2-CHANNE	\$ 842.72	\$ 817.44
0151007	44A6006/0025	CABLE, FIBER OPTIC, 25 FEET	\$ 23.39	\$ 22.69
0151008	44A7772/00	CVM 2 (CVM2) 6.6A 4'	\$ 984.86	\$ 955.31
0151009	44A7075/1	PCB ASSY URCII "CHF" FERRO REG	\$ 823.79	\$ 799.08
0247031	49A0078	REL SOCKET 8BLADE	\$ 10.93	\$ 10.60
0101176C	HEAT SHRINK	TCS2-11/13-48 48" TUBE	\$ 13.29	\$ 12.89
0111101 /	ETES/1110	L-861T(L) LED W/ BLUE GLASS LENS 1	\$ 186.59	\$ 180.99

0111124 / 0111102		1/2" CPLG		
	O6324Q	L867D 16"x 24" GROMMET BASE	QUOTED	QUOTED
	909	SECONDARY KITS CRIMPING TOOL	\$ 243.30	\$ 236.00
	105A0909	COMP FLASH CARD 2 GIG	\$ 362.61	\$ 351.73
	27A0094	SIG. SERIES SIGN RECTIFIER	\$ 11.59	\$ 11.24
	28A0011	SCR BLOCK	\$ 89.96	\$ 87.26
	28A0015	SCR BLOCK LC CCR	\$ 173.77	\$ 168.56
	28A0026	TRIAC 400V 16A TO-3 ISOLATED	\$ 34.00	\$ 32.98
	28A0039	DUAL SCR ASSY 131A 1400V	\$ 468.34	\$ 454.29
	28A0041	DUAL SCR ASSY 500A 1600V	\$ 989.80	\$ 960.11
	28A0054	DUAL SCR MOD. ASSY, 125A, 30KW	\$ 554.42	\$ 537.79
	28A0055	DUAL SCR ASSY 150A, 20KW IXT	\$ 470.87	\$ 456.74
	28A0056	SCR ASSY W/MTG 92A, 4-10KW IXT	\$ 204.24	\$ 198.11
	28A0057	SCR ASSY, 92A, 15KW IXT	\$ 257.52	\$ 249.79
	32A0025	VARISTOR V751DA40	\$ 77.79	\$ 75.46
	32A0028	VAR V571DA40	\$ 62.19	\$ 60.32
	32A0033	VAR V575LA80B	\$ 6.24	\$ 6.05
	32A0114	SURGE ARRESTOR 6KV	\$ 354.92	\$ 344.27
	35A0439	TX 240/347/480VAS MULTI SECOND	\$ 324.77	\$ 315.03
	35A0455	SIGN TX FOR STYLE 5, 1-STEP	\$ 119.95	\$ 116.35
	35C0092	L-830-3 TX 65W 6.6A/6.6A	\$ 149.62	\$ 145.13
	38A0184	IC TIME MEMORY BUTTON 4KBIT	\$ 198.39	\$ 192.44
	4071.58.510	LAMP FILTER RETAINERFRC/FTZ/FT	\$ 2.16	\$ 2.10
	4071.96.150	LTS/C FLAT SEAL	\$ 3.85	\$ 3.73
	44A2060	CLAMP BAND FOR L-862Q	\$ 10.08	\$ 9.78
	44A2071/1111	L-862Q C/C 120W 14" FIXTURE	\$ 250.99	\$ 243.46
	44A4744/1111	L-804 CURRENT	\$ 2,622.89	\$ 2,544.20
	44A4802/1R	PCB ASSY ACE LOM 1-CHANNEL REP	\$ 302.56	\$ 293.48
	44A4802R	PCB ASSY ACE LOM 3-CHANNEL	\$ 689.05	\$ 668.38
	44A4817/1211	L-850A F-RANGE WO/FD C/C 2CRD	\$ 481.72	\$ 467.27
	44A4817/2211	L-850A F-RANGE WO/FD C/R 2CRD	\$ 477.60	\$ 463.27
	44A5863	TILT SWITCH ASSY PAPI B	\$ 591.86	\$ 574.10
	44A6006/0007	CABLE FIBER OPTIC 7 FEET	\$ 14.91	\$ 14.46
	44A6006/0045	CABLE, FIBER OPTIC, 45 FEET	\$ 44.66	\$ 43.32
	L802A6116	L802A 120V, 60Hz, Class 1 (BEACON HALI-BRITE)	QUOTED	QUOTED
	44A6008/0300	L-802A HBM 400W P.S. BEACON, C	\$ 9,332.95	\$ 9,052.96
	44A6008/0301	L-802A HBM 400W P.S. W/ TT REL	\$ 9,897.46	\$ 9,600.54
	44A6009/1021	L850C (2) 105W Y/W 1CS W/O FD	\$ 674.77	\$ 654.53
	44A6035	PCB ASSY URC-II LAHSO	\$ 984.54	\$ 955.00
	44A6035/1	PCB ASSY URC-II FERRO REGULATO	\$ 997.65	\$ 967.72
	44A6084/2110	SIGN PANEL SZ2 1MOD SIG SER	\$ 433.70	\$ 420.69
	44A6084/2120	BLANK PANEL ASSY SZ2, 1MOD	\$ 131.75	\$ 127.80
	44A6084/2210	SIGN PANEL SZ2, 2-MOD S.S	\$ 773.21	\$ 750.01
	44A6084/2220	BLANK PNL ASSY SZ2, 2MOD	\$ 252.29	\$ 244.72
	44A6084/3110	SIGN PANEL SZ3 1MOD SIG. SER.	\$ 575.09	\$ 557.84
	44A6084/3210	SIGN PANEL SZ3 2-MOD SIG SER	\$ 1,019.65	\$ 989.06
	44A6084/4110	SIGN PANEL SZ4 1MOD SIG SER	\$ 861.86	\$ 836.00
	44A6104	F-RANGE PRESSURE TEST ASSEMBLY	\$ 404.64	\$ 392.50
	44A6122/C	L-804 RGL PCB CURRENT DRIVEN	\$ 561.52	\$ 544.67

44A6173/2AB	SIGN PANEL DIVIDER ASSY SZ 2 S	\$ 106.35	\$ 103.16
44A6173/2CB	SIGN PANEL DIVIDER ASSY SZ 2 S	\$ 106.35	\$ 103.16
44A6173/2CR	SIGN PANEL DIVIDER ASSY SZ 2 S	\$ 106.35	\$ 103.16
44A6173/2CY	SIGN PANEL DIVIDER ASSY SZ 2 S	\$ 106.35	\$ 103.16
44A6173/3AB	SIGN PANEL DIVIDER ASSY SZ 3 S	\$ 122.46	\$ 118.79
44A6173/3CB	SIGN PANEL DIVIDER ASSY SZ 3 S	\$ 122.46	\$ 118.79
44A6173/3CR	SIGN PANEL DIVIDER ASSY SZ 3 S	\$ 122.46	\$ 118.79
44A6173/3CY	SIGN PANEL DIVIDER ASSY SZ 3 S	\$ 122.46	\$ 118.79
44A6178	ROTARY SWITCH PCB FOR 3 -STEP	\$ 84.54	\$ 82.00
44A6178/5	ROTARY SWITCH PCB, 5-STEP, S.S	\$ 84.54	\$ 82.00
44A6225	SIGN ACTIVE BALLAST ASSEMBLY 8	\$ 1,069.34	\$ 1,037.26
44A6225/4	SIGN ACTIVE BALLAST ASSY, 4 LA	\$ 976.29	\$ 947.00
44A6225R	SIGN ACTIVE BALLAST ASSEMBLY 8	\$ 597.14	\$ 579.23
44A6377R	ACE II MAIN CTRL PCB REPAIRED	\$ 559.66	\$ 542.87
44A6415/1100	CVM INTERFACE BOX 6.6A W/IRMS	\$ 2,191.52	\$ 2,125.77
44A6507/210I	ACE II WALL MNT ASSY LCD DISPL	\$ 2,204.51	\$ 2,138.37
44A6508/1110	ACE II INTERNAL ASSY LCD DISPL	\$ 2,514.96	\$ 2,439.51
44A6683/1R	L-804 LED RGL PCB ASSY CURRENT	\$ 468.62	\$ 454.56
44A6698/1/2	L852 LED PCB, 550MA, 1-2 LED,	\$ 251.43	\$ 243.89
44A6815/CD	LED WINDCONE SURGE PCB ASSY-CU	\$ 80.01	\$ 77.61
44A6835/14	ETES REPLACEMENT CORDSET ASSY 14"	\$ 36.12	\$ 35.04
44A6921/5	LED (BAR) SIGN TERM. ASSY. RES	\$ 49.56	\$ 48.07
44A7078R	ACE II MAIN CTRL PCB, I/O ACE	\$ 735.90	\$ 713.82
44A7234/Y1	L804 LED RGL LT ENG FAA YEL	\$ 812.93	\$ 788.54
44A7293/00	PCB ASSY URC3 "CSF" FERRO REGULATOR	\$ 804.37	\$ 780.24
44A7475/1	PCB ASSY, ETES LED PWR SUPPLY,	\$ 108.77	\$ 105.51
44A7566/1	PCB ASSY, LED EMIS, PS.	\$ 205.84	\$ 199.66
44A7606/1200	EMIS LED LIGHT ENGINE BI-DIR W	\$ 248.70	\$ 241.24
44A7606/E100	EMIS LIGHT ENGINE BI-DIR R/G N	\$ 132.79	\$ 128.81
44A7606/E200	EMIS LED LIGHT ENGINE BI-DIR R	\$ 250.07	\$ 242.57
44A7645	LAMP LEVELING DEVICE	\$ 1,892.40	\$ 1,835.63
44B0023	L-861 CLAMP BAND	\$ 8.24	\$ 7.99
44B1165	RESISTOR MOUNTING BLOCK	\$ 9.61	\$ 9.32
44B1643	L-850A 100W 6.6A OSRAM, MALE L	\$ 46.45	\$ 45.06
44C1050/2S	L-858 SIZE 2 BLANK PANEL	\$ 147.09	\$ 142.68
44C1202/2	L-862Q C/Y LENS ASSY	\$ 297.59	\$ 288.66
44C1598	L-862Q ALIGNMENT TOOL	\$ 436.59	\$ 423.49
44C2005/2	L-858 SIZE 2 RR PANEL (OLD SIG	\$ 478.44	\$ 464.09
44C2069	PLUG INSERTION TOOL	\$ 114.63	\$ 111.19
44C2455	TIME DELAY ON/OFF	\$ 408.26	\$ 396.01
44D1476/1	LC 3-STEP SWITCH PCB	\$ 329.22	\$ 319.34
44D1988/2100	L-849 C.S. PCB 3-STEP	\$ 722.72	\$ 701.04
45A0456	L858 SWITCH SIG SERIES PB NC 1	\$ 40.24	\$ 39.03
47A0090	FUSE, 12A, 600V	\$ 36.25	\$ 35.16
47A0097	FUSE 90A 600V	\$ 65.78	\$ 63.81
47A0113	FUSE 2A 250V SB CNM-2	\$ 7.39	\$ 7.17
47A0117	FUSE 1/4A 250V SB	\$ 6.31	\$ 6.12
47A0170	FUSE 2.5A 250V FB 5X20MM	\$ 2.85	\$ 2.76
47A0187	FUSE 3A 500V SLO-BLO MIDGET	\$ 15.58	\$ 15.11
48A0041	200W Q6.6A/T4/DCR	\$ 36.92	\$ 35.81

48A0044	150W EWR QUARTZ LAMP	\$ 24.96	\$ 24.21
48A0069	120W EVV QUARTZ LAMP	\$ 22.23	\$ 21.56
48A0077/1	200W 6.6A ADB PAPI LAMP	\$ 30.62	\$ 29.70
48A0089	PHOTO CELL 102FAA 120VAC	\$ 158.13	\$ 153.39
48A0145	200W 6.6A EZL QUARTZ LAMP	\$ 25.48	\$ 24.72
48B0022	FT 34/HP FLASH TUBE L849	\$ 169.90	\$ 164.80
49A0081	FUSEBLOCK, 1/10 - 30A, 600V	\$ 46.40	\$ 45.01
49A0082	FUSEBLOCK, 31 - 60A, 600V	\$ 177.10	\$ 171.79
49A0085	FUSEBLOCK, 61 - 100A, 600V	\$ 209.75	\$ 203.46
53A0183	REL DPDT 15A 120VAC	\$ 20.38	\$ 19.77
53A0412/40	CONT 2P 40 FLA 120 VAC COIL	\$ 200.90	\$ 194.87
53A0412/50	CONT 2P 50FLA 120 VAC COIL	\$ 266.19	\$ 258.20
53A0412/75	CONT 2P 75 FLA 120VAC COIL	\$ 520.24	\$ 504.63
57A0095/150	CIR BRKR 150AMP 2P 600VAC W/HP	\$ 3,478.46	\$ 3,374.11
60A2592	CCR FCS MOUNTING PLATE	\$ 33.70	\$ 32.69
60A2602	PRESSURE RELEASE SCREW LESS O-	\$ 1.90	\$ 1.84
60A2678/20	FRANGIBLE CPLG, L-858, SZ2	\$ 22.74	\$ 22.06
60A2682	F-RANGE PRESSURE TESTER PART,	\$ 16.20	\$ 15.71
60A2698/20	L-858 SZ 2 PANEL DIVIDER, SIG	\$ 56.28	\$ 54.59
60A2698/30	L-858 SZ 3 PANEL DIVIDER, SIG	\$ 66.61	\$ 64.61
60C2040/1	RM 1,2 SUPPORT ARM	\$ 23.35	\$ 22.65
62A0007/3	COLUMN L861T 3.25" STEEL LED	\$ 3.93	\$ 3.81
62A2138/2	L-850C TOP COVER BI-DIR	\$ 278.86	\$ 270.49
62A2141/1	SIGN CORNER END SUPPORT, SIG S	\$ 23.16	\$ 22.47
62A2162	INNER PAN L850C/D/E 1 CORD	\$ 202.37	\$ 196.30
62B0298	2" FRANGIBLE COUPLING, 100MPH,	\$ 20.47	\$ 19.86
62B0461	COUPLING 1 1/2" FRG W/SLOT	\$ 12.86	\$ 12.47
63A0042/4	WIRE GROMMET #6F	\$ 0.79	\$ 0.77
63A0152	L-861 YELLOW/GREEN LENS	\$ 102.89	\$ 99.80
63A0222	GROMMET FOR "F" RANGE FIXTURE	\$ 0.45	\$ 0.44
63A0386/2A	MODULE CONNECTOR SIZE 2	\$ 343.60	\$ 333.29
63A0470/3	L-852E BLUE LENS	\$ 35.92	\$ 34.84
63A0968	RED FILTER FOR F-RANGE	\$ 22.79	\$ 22.11
63A0989	SIGN LAMP COVER GASKET SIG SER	\$ 22.10	\$ 21.44
63A1014	GROMMET(FOR CORDSET ASSY)	\$ 0.37	\$ 0.36
63A1054/1	ETES GLASS LENS L-861T BLUE LENS	\$ 17.99	\$ 17.45
63A1264/CY	EMIS C/Y GLASS OUTER LENS	\$ 60.16	\$ 58.36
63A1279	EMIS & ETES LED LENS SEAL	\$ 2.72	\$ 2.64
63A1285	O-RING F-RANGE RED-SILCONE	\$ 4.03	\$ 3.91
63B0015	L-861 RUBBER GASKET	\$ 1.34	\$ 1.30
63B0267/011	O-RING(FOR PRESSURE RELEASE	\$ 0.18	\$ 0.17
64A0176/20	3/8-16 X 1 1/4" HEX HEAD	\$ 0.96	\$ 0.93
64A0176/40	3/8-16 X 2 1/2" HEX HEAD FULL	\$ 1.15	\$ 1.12
64A0176/56	3/8-16 X 3 1/2" HEX HEAD FULL	\$ 1.98	\$ 1.92
64A0198/6	6-32 X 3/8 PAN HD PHIL	\$ 0.21	\$ 0.20
64A0229/16	WING SCREW 1/4-20 X 1"	\$ 1.34	\$ 1.30
64A0925/10	F-RANGE INNER PAN SCREW, STAIN	\$ 0.70	\$ 0.68
65A0529	M4 HEX JAM NUT 18-8 SS	\$ 0.27	\$ 0.26
66A0039/4	#6 EXT LOCKWASHER	\$ 0.21	\$ 0.20
66A0084	WASHER	\$ 0.29	\$ 0.28
66A0129/16	STANDOFF HEX M-F 1" X 6-32	\$ 1.13	\$ 1.10

67A0104	THERMAL JOINT COMPOND 2 OZ TUBE	\$ 33.47	\$ 32.47
70A0012	L-823 54D4D4 #8 PRIMARY KIT	\$ 21.52	\$ 20.87
70A0012/1	L-823 54SUPERD4D4 #8 SUPER KIT	\$ 40.59	\$ 39.37
70A0012/CK	L-823 #8 CONNECTOR COMPLETE KIT	\$ 29.56	\$ 28.67
70A0045	L-823 90PA6 2-POLE MALE	\$ 27.15	\$ 26.34
70A0714	90 RIGHT ANGLE FEM DISC 1/4 X	\$ 0.79	\$ 0.77
71A0070	16" HEATSHRINK KIT IAL-3	\$ 4.63	\$ 4.49
73A0107/72	72" SO CORD SET	\$ 20.33	\$ 19.72
73A0133/31	L-823 CORDSET STYLE 1 F-RANGE	\$ 40.13	\$ 38.93
73A0136/31	L823 CORDSET LED ELEVATED	\$ 17.96	\$ 17.42
75A0026	BRONZE BUSHING	\$ 3.62	\$ 3.51
77A0108	WINDSOCK 36" X 12' LITE NYLN	\$ 155.10	\$ 150.45
77A0176/19	CVM CLAMP BAND	\$ 4.01	\$ 3.89
94A0173	SERIES WIRE KIT SIG SIGN CORDS	\$ 89.20	\$ 86.52
94A0628/210	L858,LED,SZ2,1M,RETROFIT KIT	\$ 601.63	\$ 583.58
94A0628/220	L858,LED,SZ2,2M,RETROFIT KIT,L	\$ 723.22	\$ 701.52
94A0628/230	L858,LED,SZ2,3M,RETROFIT KIT,L	\$ 844.80	\$ 819.46
94A0628/240	L858,LED,SZ2,4M,RETROFIT KIT,L	\$ 966.39	\$ 937.40
94A0628/410	L858,LED,SZ4,1M,RETROFIT KIT,	\$ 781.09	\$ 757.66
94A0632	LED SIGN ON/OFF SWITCH RETROFI	\$ 100.58	\$ 97.56
AW7011	FRANGIBLE COUPLING ALUM WRENCH	\$ 477.14	\$ 462.83
CFB/0210	BENCH CCR 6.6A 200VA 120VAC 60	\$ 5,625.16	\$ 5,456.41
CFB/0250	FIELD CCR 6.6A 200VA +12 VDC O	\$ 6,646.38	\$ 6,446.99
CRF6615N3F3A000	L-829 15 KW, 6.6A, CCR 480V 3 STEP ACE3	\$ 23,479.45	\$ 22,775.07
CRF6615N5F3A000	L-829 15 KW, 6.6A, CCR 480V 5 step ACE3	\$ 23,479.45	\$ 22,775.07
CRF6620N3F3A000	L-829 20 KW, 6.6A CCR 480V 3 step ACE3	\$ 30,478.52	\$ 29,564.16
CRF6607N3F3A000	L-829 7.5 KW, 6.6A CCR 480V 3 step ACE3	\$ 17,794.61	\$ 17,260.77
CRF6630A3F3A000	L-829 30 KW, 6.6A, CCR 480V 3 STEP ACE3	\$ 33,729.34	\$ 32,717.46
CRT6604-A5F3A000	4KW 6.6A 480V 5S W/S1 L829 ACE3 & IRMS	\$ 12,140.99	\$ 11,776.76
CRT6607-N3C0A000	7.5KW 6.6A 240V 3S L828	\$ 10,379.73	\$ 10,068.34
CRT6620-N3F0A000	20KW 6.6A 480V 3S L828	\$ 15,284.39	\$ 14,825.86
CRT6620-N5F0A000	20KW 6.6A 480V 5S L828	\$ 15,284.39	\$ 14,825.86
CRT6630-N3F0A000	30KW 6.6A 480V 3S L828	\$ 18,450.70	\$ 17,897.18
CRT6630-N3F3A000	30KW 6.6A 480V 3S L828 ACE3 & IRMS	\$ 19,174.46	\$ 18,599.23
CRT6630-N5F0A000	30KW 6.6A 480V 5S L828	\$ 18,450.70	\$ 17,897.18
CRT6630-N5F3A000	30KW 6.6A 480V 5S L829 ACE3 & IRMS	\$ 19,059.82	\$ 18,488.03
EMIS2NG01S00000	L861E EMIS LED 14" O/G 60HZ 1.5CPLG	\$ 439.05	\$ 425.88
EMIS2RG01S00000	L861 EMIS LED 14" R/G 60HZ 1.5	\$ 333.47	\$ 323.47
EMIS2RR01S00000	L861 EMIS LED 14" R/R 60HZ 1.5CPLG	\$ 382.52	\$ 371.04
EMIS2RY01S00000	L861 EMIS LED 14" R/Y 60HZ 1.5	\$ 355.86	\$ 345.18
EMIS2WW01S00000	L861 EMIS LED 14" W/W 60HZ 1.5	\$ 356.06	\$ 345.38
EMIS2WY01S00000	L861 EMIS LED 14" W/Y 60HZ 1.5CPLG	\$ 356.60	\$ 345.90
EMIS2YG01S00000	L861 EMIS LED 14" Y/G 60HZ 1.5CPLG	\$ 442.33	\$ 429.06
EMIS2YR01S00000	L861 EMIS LED 14" Y/R 60HZ 1.5	\$ 355.86	\$ 345.18
ERGL/11111	L-804 LED 6.6A W/O PHOTO NONMO	\$ 3,153.15	\$ 3,058.56
HB3400-0400/U/ED	LAMP 400W M.H. PULSE START FOR HBM400PS	\$ 98.90	\$ 95.93
HB4200-0000A	TOWER MOUNTING BRACKET	\$ 482.24	\$ 467.77
HBL806-S1-IN-66A-ON-5	L-806 8', LED,6.6A, INT LIT, W/L-810	\$ 3,962.85	\$ 3,843.96

HBL807-S2-IN-120-ON-5	L-807 12' 120V LED INTERNAL	\$ 5,651.55	\$ 5,482.00
HBL807-S1-EX-66A-ON-5	WIND CONE / OB LIGHT	\$ 4,847.06	\$ 4,701.65
HBL807-S2-EX-120-ON-5	WIND CONE / OB LIGHT	\$ 4,882.10	\$ 4,735.64
HBL810-LED-12-48 VDC	L-810, 12-48VDC IR LED	\$ 331.48	\$ 321.54
ITCF/A20302	L-852A LED, G-G, 1 CDST, 12"	\$ 891.09	\$ 864.36
ITCF/DJ0302	L-852D(L) Red/Yellow	\$ 1,050.09	\$ 1,018.59
ITCF/DG0302	L-852D(L) White/Yellow In-Pavement	\$ 1,078.77	\$ 1,046.41
ITCF/D00302	L-852D(L) White/White In-Pavement	\$ 1,132.28	\$ 1,098.31
ITCF/D60302	L-852D LED, Y-OBS, ENHC, NO MO	\$ 827.90	\$ 803.06
MS00001-376-01	L-850C/D/E O-RING, TOP COVER	\$ 9.69	\$ 9.40
O1000/6	L-867B 10 1/4" B.C., 3/8" THIC	\$ 94.03	\$ 91.21
O1832RGL	L-867B HD BASE PLT RGL	\$ 148.22	\$ 143.77
O1935	L-867B BASE PLATE 1-1/2" HUB	\$ 73.67	\$ 71.46
O1935G	L-867B BASE PLATE 1-1/2" HUB W	\$ 83.81	\$ 81.30
O2000/6	L-867D 3/8" BLANK COVER 17-3/8	\$ 164.64	\$ 159.70
O2000/8	L-867D 1/2" BLANK COVER	\$ 215.80	\$ 209.33
O2007	L-867B EXTENSION, 1 3/4 - 8"	\$ 249.18	\$ 241.70
O2419F	L-868B TOP SECTION	\$ 226.84	\$ 220.03
O2512/20CDE	ADAPTER RING 14.25-11.25 B.C	\$ 442.34	\$ 429.07
O2832	L-867D HEAVY B.P. 2" HUB	\$ 157.97	\$ 153.23
O6052	L-867D GASKET	\$ 14.49	\$ 14.06
O6324Q	L-867D 16 X 24" GROMMET BASE	\$ 420.51	\$ 407.89
O6724QS	L867E LIGHT BASE 24"DIA.SP HT	\$ 707.49	\$ 686.27
O7000/12	L867E BLK CVR 24" X 3/4"TH 21.	\$ 416.04	\$ 403.56
PCR11	PHOTO CONTROL, 120VAC, 20A C/W ENCLOSURE	QUOTED	QUOTED
REIL/E1102012	L849E LED, 3 STEP, CURRENT DRIVEN, 2 LEG	\$ 13,916.53	\$ 13,499.03
RPR421A14S0B1001	PAPI LED 4 BOX VOLTAGE, NON MONITORED, 8', BAFFLES BOTH SIDES	\$ 37,344.40	\$ 36,224.07
SBOL/1320	L-810 RED LED DUAL HEAD95-264V	\$ 1,066.53	\$ 1,034.53
SH614SMA--WR-12	14" WHITE POST WITH 12" RED RE	\$ 104.56	\$ 101.42
RTO-1R08-001	L810 RED LED SINGLE 12-48VDC	\$ 330.26	\$ 320.35
SPS-1000	SOLAR POWER SUPPLY 50W 105AHR FOR LED RTO	\$ 4,195.81	\$ 4,069.94
SR21-7123220	L858,LED,SZ2,1M,SF,2P,SW,2T	\$ 1,706.04	\$ 1,654.86
SR22-7123230	L858,LED,SZ2,2M,SF,2P,SW,1T/L	\$ 2,506.51	\$ 2,431.31
SR23-7143230	L858,LED,SZ2,3M,SF,2P,SW,1T/L	\$ 3,415.98	\$ 3,313.50
SR24-7143230	L858,LED,SZ2,4M,SF,4P,W/SW,1T/L	\$ 4,123.46	\$ 3,999.76
SR41-7223220	L858,LED,SZ4,2M,DF,2P,W/SW,1T/L	\$ 2,920.44	\$ 2,832.83
TBM45S	CRIMP TOOL FOR CONNECTOR KIT	\$ 493.92	\$ 479.10
TL-24-38A	LSO-1 TORQUE LIMLTER	\$ 157.82	\$ 153.09
WS-19207	END STRIP BLADE, CB6667	\$ 19.14	\$ 18.57
WS-27702	PENCIL STRIP BLADE CB94	\$ 29.84	\$ 28.94
WS-49	STRIPPER/PENCILLER TOOL #8	\$ 312.37	\$ 303.00
ALCS MAINTENANCE MOD KIT	MAINTENANCE MOD KIT - QUOTE ONLY	QUOTED	QUOTED

	ALCS SPARES MOD KIT	SPARES ASSEMBLY - QUOTE ONLY	QUOTED	QUOTED
	ALCS UPGRADE	ALCS COMPUTER UPGRADE - QUOTE ONLY	QUOTED	QUOTED
	ALCS VAULT MOD KIT	ALCS VAULT MOD KIT - QUOTE ONLY	QUOTED	QUOTED

LCPA Item Number	Vendor Item Code	New Items to Add	Supplier List Price	3% Discount
				\$ -
				\$ -

Legend
ADD PART
DELETE PART
PART NUMBER CHANGE
ITEMS ON BOLD - PRICE CHANGE

*No additional compensation will be made for labor, materials and/or shipping.

*The amount of actual purchases of the item(s) to be delivered is neither guaranteed nor implied. A Contract Purchase Order will be issued and orders will be placed on an as-needed basis. The Contract Purchase Order number must be indicated on all invoices. Invoices must be submitted to Lee County Finance Department, PO Box 2463, Fort Myers, Florida, 33902.

*The Authority reserves the right to purchase items and make payment by Authority Purchasing Card (P-Card).

LEE COUNTY PORT AUTHORITY

Date:	<u>3/9/2021</u>	Reference Number:	<u>21-20MLW</u>
Description:	<u>Airfield lighting parts</u>	Client Department:	<u>AFT(Airfield Grounds Maint.)</u>
Procurement Representative:	<u>Megan Wilson</u>	Contact Number:	<u>239-590-4558</u>
Vendor:	<u>Allen Enterprises</u>	Actual/Projected Cost:	<u>NTE \$99,999.99</u>

NOTICE OF WRITTEN DETERMINATION OF A SOLE OR SINGLE SOURCE

Product/Service being requested: Purchase of ADB Safegate Lighting system parts for the airfield at Southwest Florida International Airport.

Describe the need: Properly maintain airfield lighting at Southwest Florida International Airport in accordance with FAA regulations and specifications.

Basis for vendor selection: Allen Enterprises is the exclusive representative for ADB Safegate products and the sole distributor for all ADB Safegate products for the entire region of the southeast United States.

Lee County Port Authority standardized its airfield lighting to ensure uniform illumination, reduce the amount of products in inventory, and to maintain conformance with FAA specifications. In order to maintain compatibility with its existing airfield lighting, the Authority intends to purchase the OEM lighting manufactured by ADB Safegate and distributed by Allen Enterprises.

Airfield lighting products on site at Southwest Florida International Airport have components that are exclusive to ADB Safeguard and are not interchangeable with parts from other manufactures.

Pricing will be quoted as needs arise and purchases will be made on an as needed basis with pricing reviewed, and if necessary, negotiated by the client department for each quote.

Please be advised that for all contracts valued at \$100,000 or more approval of Lee County Board of Port Commissioners is required.

Att: Sole Source statement

Authorized by:



Melissa M. Wendel, Procurement Manager (or designee)

Award of a contract may be made for the required good, service, system, software, or construction item; or if use of a specific product or service is required to preserve the Port Authority's existing warranty or contractual rights; or, if the product is proprietary and a trade secret under F.S. 812.081, and, is required to maintain compatibility with existing or proposed Port Authority equipment, facilities, systems, services or software.



January 5/2021

Michael Bull
Airfield Supervisor Maintenance
Lee County Port Authority
11901 Regional Lane
Fort Myers, FL 33913

**RE: ADB Safegate Americas, LLC (previously ADB Airfield Solutions)\
Southwest Florida International Airport**

Allen Enterprises, Inc. is the exclusive representative for ADB Safegate (previously known as ADB Airfield Solutions) and the sole provider for all ADB Safegate parts for the Southeast United States including Florida. ADB Safegate products are manufactured to FAA specifications and certified by ETL. Maintaining your ADB Safegate airfield lighting systems with ADB Safegate parts is the only way to ensure and maintain conformance to these specifications. The ADB Safegate products installed at your airport have components that are exclusive to ADB Safegate and cannot or will not be interchangeable with parts from other manufacturers.

Please do not hesitate to call if you any questions regarding this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "J Ghilani". The signature is fluid and cursive, with a long horizontal line extending from the end.

Jeff Ghilani

Regional Sales Director – Eastern US and Canada

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Recommend Board award RFB 21-46CDE, Purchase and Delivery of Aircraft Rescue and Fire Fighting (ARFF) Crash Truck for Lee County Port Authority, to the lowest, responsive, responsible bidder, Rosenbauer Minnesota, LLC for the base bid amount of \$915,369 and in addition approve the purchase of the items listed in Appendix B in the amount of \$215,992 including contingency, for a total cost of \$1,131,361.
2. **FUNDING SOURCE:** Federal Aviation Administration Grant 3-12-0135-059-2021; Florida Department of Transportation Grant 429511-1-94-01; and General airport operating revenues collected during the normal operation of the Airport. Account String: 20862141231.506430
3. **TERM:** NA
4. **WHAT ACTION ACCOMPLISHES:** Recommend Board award RFB 21-46CDE for ARFF Crash Truck, to the lowest, responsible bidder, Rosenbauer Minnesota, LLC. Base bid \$915,369, Appendix B for \$215,992 & contingency. Total \$1,131,361.

5. **CATEGORY:** 32.
Administrative Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

8. **AGENDA:**

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Steve Hennigan

DIV. Aviation

10. **BACKGROUND:**

On June 4, 2021 Lee County Port Authority released Request for Bid (RFB) 21-46CDE for the Purchase and Delivery of an Aircraft Rescue and Fire Fighting Crash Truck for Lee County Port Authority. The project delivery date is no later than December 30, 2022.

The RFB was broadcast through the Lee County Port Authority website, Airport Minority Airport Council, Airport Council International, Florida Airport Council and in IonWave, the Authority's e-procurement system. IonWave electronically notified 56 potential bidders. Two (2) bidders, Rosenbauer Minnesota, LLC (Rosenbauer) and Oshkosh Airport Products, submitted bids for consideration.

Rosenbauer LLC is the lowest, responsive bidder and meets all bid requirements for the scope of work as specified in Exhibit A: FAA Advisory Circular 150/5220-10E with a base bid of \$915,369.00. Rosenbauer also provided pricing on Exhibit B: Requested Additions based on Local Requirements at a cost of \$215,992 including contingency. The Exhibit B

11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR	COMMUNICATIONS AND MARKETING	OTHER	FINANCE	PORT ATTORNEY	EXECUTIVE DIRECTOR
<i>Steven P. Hennigan</i>	<i>Victoria B. Moreland</i>	<i>N/A</i>	<i>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<i>Benjamin R. Siegel</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)

items were not a factor in the base bid award.

The total cost for the Rosenbauer Crash Truck is \$1,131,361 with the funding breaking down as follows:

- FAA grant in the amount of \$915,368
- FDOT grant in the amount of \$56,570.50
- LCPA funding with contingency in the amount of \$159,422.50

The new Rosenbauer manufactured Crash Truck (909) will replace an Oshkosh Striker 3000 Crash Truck (906) that was purchased in 2007 and delivered to LCPA in 2008. It will have reached the end of its primary useful service life in 2023. Once the new truck is on-site, Crash Truck 906 will be utilized as the reserve truck and the current reserve truck that was received in 1998 (901) will be sold.

Attachments:

- 1) RFB 21-46CDE for ARFF Crash Truck MMW May 14
- 2) Exhibit A – RFB Advisor Circular 150 5220-10E Specifications
- 3) Exhibit B – RFB Requested Additions Based on Local Requirements
- 4) LCPA Notice of Intent to Award RFB 21-46CDE
- 5) Rosenbauer Bid Submittal for RFB 21-46CDE, Technical Specifications
- 6) Rosenbauer Bid Addenda, Forms 1–7
- 7) Proposal and Acceptance by Rosenbauer
- 8) Panther 6x6 Specifications Sheet
- 9) Rosenbauer Meets FAA 5220-10E Specification



Purchasing Office
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

REQUEST FOR BIDS (RFB) 21-46CDE

FOR

**PURCHASE AND DELIVERY OF AIRCRAFT RESCUE AND FIRE
FIGHTING (ARFF) CRASH TRUCK FOR
LEE COUNTY PORT AUTHORITY**

DATED: 5/24/2021

PURCHASING OFFICE DESIGNATED CONTACT

Corbin Eiland, Senior Procurement Agent

Telephone: (239) 590-4555

E-mail: cdeiland@flylcpa.com

INQUIRIES & CLARIFICATION REQUESTS DEADLINE:

Friday, June 4, 2021 by 5:00 p.m. local time

ELECTRONIC BID SUBMISSION INTO IONWAVE DUE DATE AND TIME:

Thursday, June 24, 2021 prior to 2:00 p.m. local time

The opening of bids may be viewed through Google Meets

Remote Meeting ID: meet.google.com/rji-uady-nxb

Phone Number: (US) +1 402-225-0964 | PIN: 225 303 878#



LEGAL NOTICE

**Request for Bid 21-46CDE
PURCHASE AND DELIVERY OF AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF)
CRASH TRUCK FOR LEE COUNTY PORT AUTHORITY**

**Lee County Port Authority
Southwest Florida International Airport
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913-8899
www.flylcpa.com**

The Lee County Port Authority (“Authority”) invites all interested and qualified parties to provide submissions for the above referenced solicitation.

SOLICITATION DOCUMENTS: All documents and instructions for submittal will be available on Monday, MAY 24, 2021 online at www.flylcpa.ionwave.net

PRE-SUBMISSION MEETING: A pre-submission meeting will not be scheduled nor conducted for this RFB.

RECEIVING AND OPENING: The Authority is accepting bids electronically in IonWave until Thursday, June 24, 2021, before 2:00 p.m., local time. Bids sent in any manner than electronically to IonWave will not be accepted. Hard copies, faxed bids and electronically submitted bids sent directly to the Authority will not be accepted.

The Federal Aviation Administration will be the funding source for the base bid specifications for the ARFF Crash Truck. If awarded, the Florida Department of Transportation will fund a portion of the ARFF Crash Truck Requested Additions Based on Local Requirements specifications.

AMERICANS WITH DISABILITIES ACT NOTICE: The Lee County Port Authority will not discriminate against individuals with disabilities. Any person needing special accommodations for attendance at any public meeting should contact the Purchasing Office at least even (7) days before the scheduled meeting.

CONTACT: Any requests or questions concerning this solicitation shall be addressed to the Purchasing Office, Corbin Eiland, Senior Procurement Agent, cdeiland@flylcpa.com: Telephone (239) 590-4555.

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PART A
INSTRUCTIONS FOR BIDDERS

The Lee County Port Authority (Authority) invites the submission of bids from interested and qualified individuals, corporations, partnerships, and other legal entities authorized to do business in the state of Florida with demonstrated expertise in providing the services as described in this Request for Bids (RFB). Bidders must meet the minimum qualifications stated herein and comply with the Instructions for Bidders contained in this Part A. The Authority specifically reserves the right to reject any or all bids, to waive technicalities, to make inquiries, and to request additional information from all Bidders, and to select the bid which is, in the Authority's sole discretion, judged to be in the best interest of the Authority.

A.01 PUBLIC RECEIVING AND OPENING OF BIDS

Bids submitted in response to this RFB will be electronically unsealed and read publicly after the time specified for receipt of bids stated in this RFB. The Authority reserves the right to extend this date and time for opening at Authority's sole discretion, when deemed to be in the best interest of the Authority. Bidders, their authorized agents and other interested persons are invited to view the opening of bids remotely through electronic means by using the link to the Google Meets that is provided on the cover page of this RFB.

A.02 ELECTRONIC SUBMISSION OF BIDS

The Authority is accepting electronic bids in IonWave at <https://flylcpa.ionwave.net/Login.aspx>. Submission of bids prior to the deadline is solely and strictly the responsibility of the Bidder. It is the responsibility of the Bidder to take all necessary steps to ensure its bid is received by the due date and time. The Authority Purchasing Office will not be responsible for delays caused by technological issues that may occur or for any other reason. The Bidder is hereby directed to cause submission of its bid prior to the bid opening time. Hard copy or bids sent electronically and directly to the Authority will not be accepted. Faxed bids will not be accepted. Companies must register with IonWave to participate in any Lee County Port Authority solicitation.

All electronic documents must be PDF/A compliant. PDF/A compliant documents have embedded fonts and do not reference external files. If applicable, layers must not be preserved from CADD drawings. Scanned documents must be created as PDF/A compliant, made text searchable, and have a minimum resolution of 300 dpi.

A.03 QUESTION AND CLARIFICATION PERIOD

It is the responsibility of each Bidder, before submitting a bid, to (a) examine the RFB documents thoroughly; (b) if applicable, visit the project site(s) to become familiar with local conditions that may affect cost, progress, performance or the furnishing of the work; (c) consider all applicable local, federal and state codes, laws, and regulations; and, (d) study and carefully correlate Bidder's observations with the RFB documents. Bidder is required to notify the Authority of any conflicts, errors, or discrepancies in the RFB documents before submitting a bid.

Each Bidder must examine all RFB solicitation documents and must judge for itself all matters relating to the adequacy and accuracy of such documents. Inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFB documents must be made in writing and sent to the designated Procurement Agent on or before the deadline for questions and clarification requests. All questions received and responses given will be provided in the form of a written addendum to this RFB. The Authority will not respond to inquiries received after the published deadline.



A.04 ADDENDA

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.

Interpretations, corrections or changes made by the Authority to this Request for Bids will be made by written addenda. The Authority will not be responsible for oral interpretations given by any Authority employee, representative, or others, and Bidders are not entitled to rely upon any such oral statements. The issuance of a written addendum issued by the Purchasing Office is the only official method whereby an interpretation, clarification or additional information will be given.

It is the responsibility of the Bidder, prior to submitting a bid, to review IonWave to determine if addenda to the RFB were issued and, if issued, to acknowledge and incorporate same into Bidder's bid. All addenda shall become part of the bid documents as if contained in the originally issued solicitation documents.

A.05 ACCESSING SOLICITATION DOCUMENTS AND ADDENDA

The Authority uses a third party provider, IonWave, to distribute solicitation documents including addenda and bid results. Interested parties may register to receive this information free of charge by contacting IonWave Technologies Vendor Support at 866-277-2645, or by registering at <https://flylcpa.ionwave.net/Login.aspx> or through the electronic link available at the Authority website www.flylcpa.com/purchasing.

A.06 PRE-BID MEETING

If applicable, a pre-bid meeting will be held on the date and time specified on the cover page of this RFB. The cover page will also note if the pre-bid meeting is Non-Mandatory or Mandatory and if a site visit is planned and if remote attendance is available. While attendance is not required at a pre-bid meeting that has been deemed non-mandatory; it is strongly advised and encouraged. Conversely, attendance is **mandatory** for pre-bid meetings that are indicated as mandatory on the cover page of this RFB. A Bidder's failure to attend a mandatory pre-bid meeting will result in its bid being considered non-responsive.

The purpose of the pre-bid meeting is to discuss the requirements and objectives of this RFB, to answer any questions potential Bidders have about the RFB, and to answer any general questions about the Authority. At the pre-bid meeting the Authority will attempt to answer all questions received; however, reserving the right to answer any questions in writing in a subsequent addendum to the RFB. All prospective Bidders are encouraged to obtain and review the RFB documents prior to the pre-bid meeting in order to be prepared to discuss questions or concerns about the requirements of the Authority.

In order to conduct the pre-bid meeting as expeditiously and efficiently as possible, it is requested that all pre-bid questions be sent to the Purchasing Office contact indicated on the cover page of this RFB at least three (3) business days prior to the scheduled pre-bid meeting to allow staff time to research the questions.



A.07 COST OF PREPARATION

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

A.08 WITHDRAWAL OF BID

Bids may be withdrawn or revised by the Bidder for any reason prior to the date and time fixed for the public opening.

Negligence on the part of the Bidder in preparing its bid confers no right of withdrawal or modification after the date and time fixed for the public opening.

A.09 AMERICANS WITH DISABILITIES ACT NOTICE

The Authority does not discriminate against individuals with disabilities. Any person needing special accommodations to attend the bid opening or pre-bid meeting should contact the designated Procurement Agent indicated on the cover page of this solicitation document at least seven (7) days before the meeting.

A.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 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 federal or state law or applicable regulations, including but not limited to employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR, Part 21.

A.11 GENERAL CIVIL RIGHTS

The successful Bidder agrees to comply with the nondiscrimination provisions stated above in A.10 as well as other pertinent statutes, regulations, 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.

A.12 CALCULATIONS, ERRORS, OMISSIONS

All bids will be reviewed mathematically and, if necessary, corrected. In the event of multiplication/addition 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 Bidder’s submission will govern.

Bidders must fill in all information requested on the bid forms. All blanks on the bid forms must be completed. Where submitted bids have erasures or corrections, such erasures or corrections must be initialed in ink by the Bidder. Bids submitted on a form other than what is furnished



herein, or bids submitted on the Authority's bid form that is altered or detached, may be considered irregular. Bidders must fully comply with all requirements of this RFB in its entirety. Bid Forms must be executed by an authorized signatory who has the legal authority to make the bid and bind the company.

A.13 DIRECT PURCHASE

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

A.14 TERMINATION FOR CONVENIENCE

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.

A.15 PUBLIC RECORDS AND DISCLOSURE

Bids and related information and materials received by the Authority are public records under Florida law, and will be subject to public inspection upon the issuance of the Authority's notice of intended decision, 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, Florida Statutes. If the Authority rejects all bids and concurrently notices its intent to reissue the solicitation, the rejected bids are exempt from public disclosure until the Authority provides notice of intended decision concerning the reissued solicitation or until the Authority withdraws the reissued solicitation. A bid is not exempt for longer than twelve months after the notice of rejection of all bids.

Pursuant to Florida Statute, Section 119.0701, to the extent a successful Bidder is performing services on behalf of the Authority, such successful Bidder 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. The Bidder 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 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 term of the Agreement and following completion of the Agreement if the successful Bidder does not transfer the records to the Authority.
- 4) Upon completion of the Agreement, 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 Bidder transfers all public records to the Authority at the completion of the Agreement, the successful Bidder must destroy any duplicate records that are exempt from public disclosure requirements. If the successful Bidder keeps any public records, it must 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.

In accordance with Florida Statutes sections 119.071(3) and 331.22, airport security plans or other records relating directly to the physical security or fire safety of a public facility or revealing security or fire safety systems are confidential and exempt from public disclosure. For example, photographs, maps, blueprints, drawings, and similar materials that depict critical airport operating facilities are exempt, as well as building plans, blueprints, schematic drawings, and diagrams depicting the internal layout and structural elements of a public building or structure, all of which are exempt from disclosure under the provisions cited in this paragraph.

To the extent the law applies to the goods or services to be acquired through this RFB, Bidders agree to treat all such information as confidential and not to disclose it without prior written consent of the Authority.

A.16 TRADE SECRETS

As stated above in A.15, all documents, materials, and data submitted as a part of a response to this Request for Bids are governed by the disclosure, exemption and confidentiality provisions relating to public records as outlined in the Chapter 119, Florida Statutes. Under Florida law, designation of an entire bid as “trade secret,” “proprietary” or “confidential” is not permitted and may result in a determination that the bid is nonresponsive and therefore the bid will not be evaluated or considered.

Except for material that is considered a “trade secret” as defined by Chapter 812, Florida Statutes, all documents, materials and data submitted as part of a bid in response to this RFB become the property of the Authority.

The Authority does not believe that any of the information by this RFB constitutes a trade secret under Florida law. To the extent Bidder desires to maintain the confidentiality of any materials that it believes constitute trade secrets pursuant to Florida law, any trade secret material submitted as part of a bid must be segregated from the portions of the bid that are not declared as trade secrets. In addition the Bidder must cite, for each trade secret claimed, the Florida statute number that supports the designation of the information as a trade secret and include a brief explanation as to why the cited statute is applicable to the information claimed as trade secret. Additionally, Bidder must provide a copy of its bid that redacts all information designated as trade secret. In conjunction with any trade secret designation, Bidder acknowledges and agrees that:

- 1) Trade secret requests made after opening will not be considered. However, the Authority reserves the right to clarify the trade secret claim at any time;
- 2) By submitting a bid, all Bidders grant the Authority, its officials, employees, agents and representatives full rights to access, view, consider, and discuss the information designated as trade secret; and,
- 3) After notice from the Authority that a public records request has been made to inspect or copy all or any portion of Bidder’s bid, the Bidder, at its sole expense,



will be responsible for defending its determination that the submitted material (or portions thereof) constitutes a trade secret under Florida law and is not subject to disclosure. Once the Authority notifies the Bidder that it has received a request to inspect or copy information that is designated a trade secret, the Bidder will take prompt action to respond to the request, but no later than 10 calendar days from the date of notification by the Authority, or Bidder will be deemed to have waived the trade secret designation of the materials.

Bidder agrees to indemnify, hold harmless and defend the Authority and its officials, employees, agents and representatives from any losses, claims, actions, damages (including attorney's fees and costs) and amounts arising or incurred by the Authority from or related to the designation of trade secrets by the Bidder, including but not limited to actions or claims arising from Authority's nondisclosure of the trade secret materials.

A.17 TAX EXEMPT

The Authority is generally a tax-exempt entity subject to applicable provisions of Florida law regarding sales tax. The successful Bidder will be responsible for complying with the Florida sales and use tax laws as may apply. The amount(s) of compensation set forth in any agreement resulting from this RFB, or in any change orders authorized pursuant to the agreement, 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.

A.18 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 it is in the best interest of the Authority, in the Authority's sole judgment, and in conformance with applicable state and local laws or regulations.

The Authority further reserves the right to make inquiries, request clarification, require additional information and documentation from any Bidder, or cancel this solicitation and solicit for new bids at any time prior to the execution of an agreement. If a single response is received by the deadline for receipt of bids, it may or may not be rejected by the Authority depending on available competition and current needs of the Authority. The Authority reserves the right to take such actions as it deems necessary and in its best interests.

A.19 AUTOMATIC DISQUALIFICATION

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

- Failure to meet mandatory minimum qualifications stated herein.
- 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.
- Evidence that Bidder has a financial interest in the company of a competing Bidder.
- 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.

A.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, in 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.

A.21 NO LOBBYING

All Bidders 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 are not to be lobbied, either individually or collectively, regarding this solicitation. During the entire procurement process, all Bidders and their subcontractors, agents, or other representatives are hereby placed on notice that they are not to contact any persons listed above (with the exception of the designated Purchasing Office contact indicated on the cover page of this RFB) if intending to submit or have submitted a bid for this project. All Bidders, subcontractors, and any agents must submit individual affidavits with their submissions 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 Bids. **Joint ventures must file a separate affidavit for each joint venture partner.**

ANY BIDDER IN VIOLATION OF THIS PROHIBITION WILL BE AUTOMATICALLY DISQUALIFIED FROM FURTHER CONSIDERATION FOR THIS REQUEST FOR BIDS.

A.22 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 successful Bidders 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.

A.23 RIGHT TO PROTEST

Any Bidder affected adversely by an intended decision to award any bid shall file a written notice of intent to file a protest with the Purchasing Office 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.

Details regarding the bid protest policy are contained within the Lee County Port Authority Purchasing Manual, which is available at www.flylcpa.com. **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.**

A.24 FINANCIAL RESPONSIBILITY

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

A.25 OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES

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

A.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.

A.27 ESTIMATED QUANTITIES

If provided, estimated quantities indicated on the bid form are for bidding purposes only. The amount of actual purchase of the item(s), or the service(s) to be performed, described in this Request for Bids is neither guaranteed nor implied. Payment to the successful Bidder will be made only for the actual quantities of work performed or materials furnished.

A.28 NON-EXCLUSIVITY OF AGREEMENT

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

A.29 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 its 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 the 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.

A.30 FRONTLOADING BID PRICING PROHIBITED

If applicable, prices offered for performance and/or acquisition activities which occur early in the project schedule, such as mobilization; clearing and grubbing; or maintenance of traffic; that are substantially higher than pricing of competitive Bidders within the same portion of the project schedule, will be presumed to be front loaded. Front loaded bids could reasonably appear to be an attempt to obtain unjustified early payments creating a risk of insufficient incentive for the Bidder to complete the work or otherwise creating an appearance of an undercapitalized Bidder.

In the event the Authority presumes a bid to be front loaded, it will request the opportunity to, and reserves the right to, review all source quotes, bids, price lists, letters of intent, etc., which the Bidder obtained and upon which the Bidder relied upon to develop the pricing or acquisition timing for these bid items. The Authority reserves the right to reject as nonresponsive any presumptively front loaded bids where the Bidder is unable to demonstrate the validity and/or necessity of the front loaded costs.

A.31 PUBLIC ENTITY CRIMES

In accordance with Section 287.133, 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 on a contract; 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 following the date of being placed on the convicted vendor list.

To ensure compliance with the foregoing, Bidders 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.32 BID EVALUATION

Upon evaluation of all bids received, a notice of intent to award may be made to the lowest, responsive, and responsible Bidder whose bid(s) serves the best interests of the Authority, in the Authority's sole judgment and discretion.

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 goods and services in accordance with any agreement resulting from this RFB 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.

The recommendation for award of the agreement will be forwarded to the Airports Special Management Committee for review, and then to the Authority Board of Port Commissioners for decision.

A.33 EXECUTION OF PURCHASE ORDER

Failure of the successful Bidder to accept the executed purchased order within ten (10) calendar days from the date the notice of intent to award is announced shall be just cause for cancellation of the award and forfeiture of the bid bond.

The Authority will submit the successful bidder's bid for review and approval of the Board of Port Commissioners; complete the execution of the awarded purchase order in accordance with local laws or ordinances, and return one fully executed original purchase order, along with the bid bond, if applicable, to the successful Bidder. Delivery of the fully executed purchase order to the successful Bidder constitutes the Authority's approval to be bound by the successful Bidder's bid and the terms and conditions specified herein.

Until approval and final execution of the purchase order, 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, in the Authority's sole judgment and discretion.

A.34 PAYMENT

Payment will be made in accordance with the awarded bid pricing for the goods and/or services completed and accepted by the Authority and upon receipt of the successful Bidder's invoice. **All invoices shall include purchase order number or agreement number, as applicable, and shall be submitted to Lee County Finance Department, PO Box 2463, Fort Myers, Florida, 33902.**

A.35 E-VERIFY

In accordance with section 448.095(2), Florida Statutes, beginning January 1, 2021, the successful Bidder must register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

Furthermore, the successful Bidder's agreement with the Authority cannot be renewed unless at the time of renewal, the successful Bidder certifies to the Authority that it has registered with and uses the E-Verify system.

As applicable, if the successful Bidder enters into an agreement with a subcontractor, the subcontractor must provide the successful Bidder with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien and successful Bidder must maintain a copy of such affidavit for the duration of the agreement. If the successful Bidder develops a good faith belief that any subcontractor with which is it contracting has knowingly



violated section 448.09(1), Florida Statutes (making it unlawful for any person knowingly to employ, hire, recruit, or refer, with for herself or himself, or on behalf of another for private or public employment with the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States), the successful Bidder shall terminate the contract with the subcontractor. Failure to do so will result in termination of the agreement by the Authority.

If the Authority develops a good faith belief that the successful Bidder has knowingly violated sections 448.09(1) or 448.095(2), Florida Statutes (making it unlawful for any person knowingly to employ, hire, recruit, or refer, with for herself or himself, or on behalf of another for private or public employment with the state, an alien who is not duly authorized work by the immigration laws or the Attorney General of the United States) the Authority shall terminate this agreement. Pursuant to section 448.095(2)(c)(3), Florida Statutes, termination of the agreement by the Authority, under the above circumstances is not a breach of contract and may not be considered as such.

[END OF PART A]

[Remainder of page intentionally left blank]



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 properly complete all bid forms.

B.01 MINIMUM QUALIFICATIONS

Bidders are required to meet the following minimum qualifications.

Bidders contracting in a corporate capacity must be registered with the Florida Department of State Division of Corporations as a Florida corporation or other Florida legal business entity in good standing and authorized to conduct business in the State of Florida. Foreign (i.e., non-Florida) companies that are properly registered with the Florida Department of State, Division of Corporations to conduct business in Florida will be deemed to meet the minimum qualifications.

Documentation of registration and status is requested, but not required as the Authority will verify with the Division of Corporations.

Further, Bidder must provide evidence that it has been in continuous operation providing the services that are subject of this RFB for a minimum of two years (2) prior to the date the bid.

Provide reference information on the Bid Form where indicated to verify this minimum qualification has been met.

Bidder must meet all requirements specified in Exhibit A: Advisory Circular 150/5220-10E, failure to do so may deem a bidder's bid non-responsive and ineligible for award.

To demonstrate this minimum qualification is met, please complete Part G, Form 7.

B.02 BASIS OF AWARD

The award will be made to the responsive and responsible Bidder having the lowest total base bid for Scope of Work specified in Exhibit A: Advisory Circular 150/5220-10E.

The lowest, responsible Bidder shall mean that Bidder who makes the lowest bid to sell goods and/or services of a quality which meets or exceeds the quality of goods and/or services set forth in the RFB documents or otherwise required by the Authority.

To be responsive, a Bidder shall submit a bid which conforms in all material respects to the requirements set forth in the RFB.

To be a responsible Bidder, the Bidder shall have the capability in all respects to perform fully the bid requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

The Authority reserves the right to make such an investigation as it deems necessary to determine the ability of any Bidder to furnish the service requested. Information that the Authority deems necessary to make this determination shall be provided by the Bidder. Such information may include, but shall not be limited to, current financial statements, verification of availability of equipment and personnel, and past performance records.



B.03 BID PRICES

All bid prices submitted in response to this solicitation must be fixed, firm net pricing and include all labor, material, equipment and costs.

B.04 PURCHASE ORDER

A purchase order will be generated by the Authority and provided to the successful Bidder. Invoices must contain the purchase order number. No services are allowed unless a valid purchase order exists.

B.05 SCHEDULE

The crash truck must be delivered by December 31, 2022. Bidder must indicate the total time to deliver the crash truck from the date of award, which is anticipated to be no later than July 15, 2021.

B.06 TRAINING

For training requirements, please see Exhibit A: Advisory Circular 150/220-10E.

B.07 QUALITY GUARANTEE / WARRANTY

The successful Bidder will guarantee material and workmanship without disclaimers, to include all parts and labor, for a minimum of twenty four (24) months from the date of final acceptance by the Authority. Bidders must provide a copy of guarantee/warranty with submission.

If any product utilized by the successful Bidder does not meet performance representation or other quality assurance representations as published by manufacturers, producers, or distributors of such products or the specifications listed, the successful Bidder shall pick up the product from the Authority at no expense to the Authority.

The Authority reserves the right to reject any or all materials, if in its sole judgment and discretion, the material or item in question reflects unsatisfactory workmanship or manufacturing or shipping damage. The successful Bidder shall refund, to the Authority, any money which has been paid for the same.

The price bid shall include quality guarantee/warranty in accordance with this section. No additional compensation will be made to the successful Bidder for providing a quality guarantee/warranty.

B.08 REGULATIONS

The successful Bidder shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of the work specified herein.

As applicable, the successful Bidder shall obtain all permits, licenses and certificates, or any approvals of plans or specifications as may be required by federal, state and local laws, ordinances, rules and regulations, for the proper execution of the work specified herein. A current copy of all applicable licenses, registrations and/or permits shall be maintained on the jobsite during the progress of the work.

Spillage or dumping of hazardous materials caused or made by the successful Bidder or its subcontractor(s) on Authority property shall be reported immediately to the Authority's



representative. The successful Bidder shall be responsible for all cleanup and any costs incurred for such incidents.

The successful Bidder shall comply with federal and state right-to-know laws if hazardous materials are used in the work.

Safety Data Sheets (SDS) must be made available to all Authority employees and representatives.

B.09 PERSONNEL

It is the successful Bidder's responsibility and obligation to train its employees to be able to identify and understand all signs and notices in and/or around the work areas that relate to them or the services being performed by them under the Agreement. In addition, the successful Bidder must have someone in attendance at all times who can communicate instructions to its employees.

A valid driver license (Commercial Driver License, if applicable) will be required of all personnel operating motor vehicles or motorized equipment on roadways in or around the Airport property. Each motor vehicle brought onto the Authority's premises shall have the successful Bidder's business name and/or logo prominently displayed on the vehicle.

B.10 AIR OPERATIONS AREA (AOA) SECURITY MAINTENANCE

Employees of the successful Bidder or subcontractors who must work full or part time within the Air Operations Area (AOA) at Southwest Florida International Airport must qualify for and obtain airport issued identification badges which must be worn at all times while within the AOA. Badges shall be worn on outer, uppermost garments so as to be clearly visible in order to distinguish, on site, employees assigned to a particular Provider. Badges shall be issued individually. Drivers of delivery or hauling vehicles will not require badges but must be under the escort of a properly badged employee.

Any work being conducted within the AOA or that may be in an area requiring access through, or around the AOA will be coordinated in advance with the Authority's Project Coordinator. At no time may the successful Bidder access these areas on its own without prior coordination and/or escort.

B.11 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 Sections 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, agents, and subcontractors to comply with the provisions of this paragraph.

[END OF PART B]



PART C
SPECIFICATIONS / SCOPE OF WORK

C.01 PURPOSE

The Authority seeks a qualified bidder to supply and deliver a crash truck. All work described herein must be fully and properly installed in accordance with the requirements of the RFB and any agreement entered into with the Authority, and delivered to and accepted by the Authority no later than December 31, 2022.

C.02 BASE BID SPECIFICATIONS

Please see Exhibit A: Advisory Circular 150/5220-10E.

C.03 REQUESTED ADDITIONS BASED ON LOCAL REQUIREMENTS

Please see Exhibit B: Requested Additions Based on Local Requirements. These requested additions are not guaranteed to receive award as a result of this RFB and may be awarded at the sole discretion of the Authority.

[END OF PART C]

[Remainder of page intentionally left blank]



**PART D
FEDERAL REQUIREMENTS**

The purpose of the table provided below is to indicate the federal provisions/clauses that are applicable to this procurement and to which bidder must comply. Please refer to the **Equipment** column in the table below. Items marked as “REQD” in the equipment column are provisions that are applicable to this RFB and any resulting purchase order. Items marked as “n/a” do not apply to this RFB.

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
Access to Records and Reports	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Affirmative Action Requirement	\$10,000	REQD	Limited	REQD	n/a	Limited	n/a
Breach of Contract	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
Buy American Preferences	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) Buy American Statement	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) BA – Total Facility	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) B.A. – Manufactured Product	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
Civil Rights – General	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
Civil Rights - Title VI Assurances	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) Notice - Solicitation	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) Clause - Contracts	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) Clause – Transfer of U.S. Property	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) Clause – Transfer of Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) Clause - Construct/Use/Access to Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) List – Pertinent Authorities	\$0	NIS	REQD	REQD	REQD	REQD	REQD
Clean Air/Water Pollution Control	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
Contract Work Hours and Safety Standards	\$100,000	NIS	Limited	REQD	n/a	Limited	n/a
Copeland Anti-Kickback	\$ 2,000	NIS	Limited	REQD	n/a	Limited	n/a
Davis Bacon Requirements	\$ 2,000	REF	Limited	REQD	n/a	Limited	n/a
Debarment and Suspension	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
Disadvantaged Business Enterprise	\$ 0	REF	REQD	REQD	REQD	REQD	n/a
Distracted Driving	\$3,500	NIS	REQD	REQD	REQD	REQD	n/a
Energy Conservation Requirements	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Equal Employment Opportunity	\$10,000	NIS	Limited	REQD	n/a	Limited	n/a

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Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
(1) EEO Contract Clause	\$10,000	NIS	Limited	REQD	n/a	Limited	n/a
(2) EEO Specification	\$10,000	NIS	Limited	REQD	n/a	Limited	n/a
Federal Fair Labor Standards Act	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
Foreign Trade Restriction	\$ 0	REF	REQD	REQD	REQD	REQD	n/a
Lobbying Federal Employees	\$ 100,000	REF	REQD	REQD	REQD	REQD	n/a
Occupational Safety and Health Act	\$ 0	NIS	REQD	REQD	REQD	REQD	Info
Prohibition of Segregated Facilities	\$10,000	NIS	Limited	REQD	n/a	Limited	n/a
Recovered Materials	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
Rights to Inventions	\$ 0	NIS	Limited	Limited	n/a	n/a	n/a
Seismic Safety	\$ 0	NIS	Limited	Limited	n/a	n/a	n/a
Tax Delinquency and Felony Conviction	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Termination of Contract	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
Veteran's Preference	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a

The following federal provisions are applicable to this RFB and any resulting purchase order. For the purposes of this section, “Contractor” refers to the successful bidder and “Owner” refers to the Lee County Port Authority.

D.01 ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

D.02 BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor



corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the *Contractor* must correct the breach. Owner may proceed with termination of the contract if the *Contractor* fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

D.03 BUY AMERICAN PREFERENCE

The Contractor agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP funded projects are produced in the United States, unless the Federal Aviation Administration has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Owner will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

The Certificate of Buy American Compliance is located in Part G, Form 8.

D.04 GENERAL CIVIL RIGHTS PROVISIONS

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.

D.05 CIVIL RIGHTS – TITLE VI ASSURANCES

A) TITLE VI SOLICITATION NOTICE

The Lee County Port Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.



B) TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

Compliance with Nondiscrimination Requirements:

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) **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 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 non-discrimination 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 the litigation to protect the interests of the United States.

C) TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Contractor, 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:

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



12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

D.06 CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

D.07 DEBARMENT AND SUSPENSION

1) CERTIFICATION OF OFFERER/BIDDER REGARDING DEBARMENT

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

2) CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:



- A. Checking the System for Award Management at website: <http://www.sam.gov>.
- B. Collecting a certification statement similar to the Certification of Offerer /Bidder Regarding Debarment, above.
- C. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

D.08 DISADVANTAGED BUSINESS ENTERPRISE

Contract Assurance (§ 26.13) –

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (§26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Lee County Port Authority. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Lee County Port Authority. This clause applies to both DBE and non-DBE subcontractors.

D.09 DISTRACTED DRIVING

TEXTING WHEN DRIVING

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.



In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

D.10 ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201*et seq.*).

D.11 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The *Contractor* has full responsibility to monitor compliance to the referenced statute or regulation. The *Contractor* must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

D.12 FOREIGN TRADE RESTRICTION CERTIFICATION

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC Section 1001.



The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

D.13 LOBBYING FEDERAL EMPLOYEES

CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of 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.



- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

D.14 OCCUPATIONAL HEALTH AND SAFETY ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

D.15 PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or

The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.



Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

D.16 TERMINATION OF CONTRACT

TERMINATION FOR CONVENIENCE

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

- 1) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
- 2) documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
- 3) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
- 4) reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.



TERMINATION FOR DEFAULT

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract if the Contractor:

1. Fails to commence the Work under the Contract within the time specified in the Notice-to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the Work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.



D.17 VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

[END OF PART D]

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**PART E
RESERVED**

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[END OF PART E]



PART F
INSURANCE, INDEMNIFICATION AND BOND REQUIREMENTS

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 Bidder’s ability to obtain the insurance coverage as stated herein, should be submitted with the bid.

No agreement will be approved or entered into pursuant to this Request for Bids until all insurance coverage(s) indicated herein has been obtained. The cost for obtaining insurance coverage is the sole responsibility of the successful Bidder. The successful Bidder must obtain and submit to the Purchasing Office within five (5) calendar days from the date the notice of intent to award is issued, proof of the following minimum amounts of insurance on a standard ACORD form. The insurance provided will include coverage for all parties employed by the Bidder. At the discretion of the Authority, all insurance limits may be re-evaluated and revised at any time during the term of the Agreement.

Insurance Requirements (Types and Limits)

Commercial General Liability with limits of at least the following:

\$2,000,000	General Aggregate
\$2,000,000	Products & Completed Operations Aggregate
\$1,000,000	Personal/Advertising Injury
\$1,000,000	Each Occurrence
\$ 50,000	Fire Damage
\$ 5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Additional Insured

The Authority must be named as an additional insured on all policies except for workers’ compensation. The policy must be endorsed to include the following 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 insured, including materials, parts or equipment furnished in connection with such Work or Operations.”

Acceptability of Insurers

Insurance is to be placed with insurers duly licensed and authorized to do business in the State of Florida and with an AM 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 successful Bidder from potential insurer insolvency.

Waiver of Subrogation

Insurance will be primary and noncontributory and will include a Waiver of Subrogation by both the successful Bidder 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 is in effect, the successful Bidder will 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. The firm's current insurance certificate or a statement from the firm's insurance company verifying the successful Bidder's ability to obtain the insurance coverage as stated herein, should be submitted with the bid. The appointed insurance agent or carrier will be duly licensed to provide coverage and honor claims within Florida. Please send the certificate of insurance with Lee County Port Authority as certificate holder to riskmanagement@flylcpa.com.

The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory.

Policy on Request

If requested in writing by the Authority, the successful Bidder will provide the Authority with a certified copy of all applicable insurance policies required by this RFB and any agreement entered into with the Authority.

Change in coverage

The successful Bidder is required to provide a minimum of thirty (30) days written notice to the Authority Risk Manager of any cancellation, nonrenewal, termination, material change, or reduction of any coverage required herein. All such notices will be sent directly to Lee County Port Authority Risk Manager, 11000 Terminal Access Road, Suite 8671, Fort Myers FL, 33913. If the successful Bidder fails to provide the requisite notice, the Authority may terminate any agreement(s) with the successful Bidder.

Subcontractor's requirement

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

Sovereign Immunity

The successful Bidder understands and agrees that by entering an Agreement with Bidder, the Authority does not waive its sovereign immunity and nothing herein will 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 Bidder will defend, indemnify, and hold harmless 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 Bidder, or anyone performing any act required in connection with performance of any Agreement awarded pursuant to this RFB.

The successful Bidder represents that it knows of no allegations, claims, or threatened claims that the services, materials, or information that it proposes to be provided to the Authority under this RFB infringe any patent, copyright, or other proprietary right. The successful Bidder will defend,



indemnify and hold harmless the County and the Authority, and their respective Boards, Commissioners, employees, agents and other representatives of, from and against all losses, claims, damages, liabilities, costs, expenses and amounts arising out of or in connection with an assertion that any Bidder's services, materials or information to be provided or the use therefore, infringe any patent, copyright or other proprietary right of any third party.

The successful Bidder's obligations to defend, indemnify and hold harmless the County and the Authority, and their respective Boards, Commissioners, employees, agents and other representatives, as stated in this section, will apply and extend to the performance of any services by Bidder to the Authority as contained in the bid and any negotiated agreement(s), and these obligations survive termination or the completion of the services contracted for, whether partially or fully performed.

Performance Bond Requirements

□ Performance Guarantee: *If checked*, a performance guarantee or security deposit in the amount of \$ _____ must be presented by the successful Bidder to the Authority within ten days of issuance by the Authority of the written notice of intent to award the Agreement.

The purpose of the performance guarantee is to serve as a security deposit for the full and faithful performance by the awarded bidder of all terms, covenants, and conditions of the Agreement, throughout the term of the Agreement, including any renewal periods thereof.

The performance guarantee must be issued by a surety acceptable to the Authority, or may be submitted in the form of an irrevocable letter of credit in favor of the Authority guaranteeing full and satisfactory performance.

To be acceptable to the Authority, a Surety must comply with the following minimum provisions:

- a. All Sureties must be admitted to do business in Florida and all bonds must be submitted on the exact forms contained within the contract documents.
- b. Attorneys-in-Fact who sign bid bonds or payment and performance must file with such bond a certified copy of their Power of Attorney to sign such bond.
- c. Agents of surety companies must list their name, address and telephone number on all bonds. A Florida registered agent must sign all bonds.
- d. Surety must have twice the minimum surplus and capital required by the Florida Insurance Code at the time of bid solicitation.
- e. Surety must be in compliance with all provisions of the Florida Insurance Code and hold a currently valid certificate of authority issued by the United States Department of the Treasury under SS.31 U.S.C. 9304-9308.
- f. Surety must have a minimum underwriting limitation of \$5,000,000 published in the latest edition of the Federal Register for Federal Bonds.

Sureties rated through A.M. Best shall be rated as "A-" or better as to General Policyholders Rating and Class VII or better as to financial category by the most current Best's Key Rating

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Guide, published by A.M. Best Company. Further, surety must have fulfilled all of its obligations on all other bonds previously given to the Lee County Port Authority or Lee County, Florida.”

[END OF PART F]

[Remainder of page intentionally left blank]



PART G – FORMS

Note: This form must be submitted with the Bidder’s bid submittal

FORM 1: BIDDER’S CERTIFICATION

I have carefully examined the entirety of this Request for Bids (RFB) which includes Instructions for Bidders, Special Instructions and Requirements, Specification/Scope, and Insurance and Bond requirements. I acknowledge receipt and incorporation of the following addenda. The cost, if any, of such revisions has been included in my bid pricing.

Addendum No. ___; dated _____. Addendum No. ___; dated _____.
Addendum No. ___; dated _____. Addendum No. ___; dated _____.

I propose to perform the work/offer the items described in this RFB and I agree to hold pricing for at least 120 calendar days to allow the Authority time to properly evaluate this bid. I agree 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

Notary Public – State of _____
County of _____

Sworn to and subscribed before me by means of physical presence or online notarization this _____ day of _____, 20__.

Personally known _____ or produced identification _____

(Type of identification) _____

Printed typed or stamped commissioned name of Notary Public



FORM 2A: OFFICIAL BID FORM-BASE BID

BID NO. RFB 21-46CDE

BIDDER'S NAME: _____

BIDS ARE DUE ON: **THURSDAY, JUNE 24, 2021**

PRIOR TO **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 solicitation documents, agrees to furnish all labor, materials, equipment, and other incidental items, and services necessary to the:

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in full accordance with the solicitation and contract documents and all other documents related thereto on file in the Purchasing Office and, if awarded the bid, to complete the said work within the time limits specified for the pricing awarded, which is based on the following bid schedule:

BASE BID (PER EXHIBIT A: ADVISORY CIRCULAR 150/5220-10E):

PURCHASE AND DELIVERY OF ONE (1) CRASH TRUCK \$ _____

BASE BID GRAND TOTAL: \$ _____

(Written)

How many days are necessary to complete (including delivery) the Base Bid requirements:
_____ calendar days from award of bid.

_____ Copy of quality guarantee/warranty is enclosed per Part B., B.09



FORM 2B: OFFICIAL BID FORM – EXHIBIT B: REQUESTED ADDITIONS BASED ON LOCAL REQUIREMENTS

For each Line Number listed below, Bidder must indicate which of the following classifications apply (choose only one):

- **Standard and Included in Base Bid:** – requested addition is “off the shelf” and already supplied in the Base Bid
- **Not Available:** bidder is unable to supply requested addition
- **Available:** bidder can supply requested addition, but for an additional price (please use the last column in the table below to indicate the Line Number pricing.

			Please select one of the following three choices for each Line Number by marking an “X”			Only provide pricing if “Available” was marked
Line Number	Section Number	Description	Standard and Included in Base Bid	Not Available	Available	Price
1	3.1.4.2	Temperature Range: The apparatus will be capable of satisfactory storage and operation in Tropical environments. The air conditioning systems must be enhanced with additional cab cooling capabilities to meet the local needs for extended standby or emergency operations in the high heat / high humidity environment encountered year round in Southwest Florida				
2	3.3.11.2	Compressed air shoreline or vehicle mounted auxiliary air compressor: Pre-installed Auto-Ejecting shoreline air port for the air system and an on-board air compressor				
3	3.4.3	Instruments and Controls: An externally mounted Pre-start or Remote Start control system that allows for the driver/operator to activate the start-up sequence for the apparatus and starting of the apparatus all from the exterior of the truck. All dash lights and displays are dimmable for night time operations.				
4	3.4.5	Forward-Looking Infrared (FLIR): FLIR camera capable of providing pinpoint temperature readings.				

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5	3.6.3	Foam System: An On-board Input-based foam testing system to be included on this apparatus. This system must allow for the testing of the proportioning system without the need to discharge AFFF to the environment.				
6	3.6.3 and 3.8	Foam System & Halotron I system per Exhibit A: Advisory Circular 150/5220-10E, Appendix A.5.1 Addition: 6.1: This apparatus delivered with a complete amount of AFFF and Haltron I so that the truck can be tested, fully refilled, and put into active service immediately upon arrival.				
7	3.6.7	Pre-connected Handlines: In addition to the pre-connected handline, an additional 1" x 150' reeled hoseline rated for 95gpm @ 100psi is to be located in a compartment on the opposite side of the apparatus from the Halogenated agent reeled hoseline.				
8	3.6.5.1	HRET Trainer Aircraft Skin Penetration Training Device per Exhibit A: Advisory Circular 150/5220-10E, Appendix B.1: Aircraft Skin Penetration Training Device to be included in the purchase in order to satisfy FAA Advisory Circular 150/5210-23 which requires that all personnel operating an HRET-equipped truck be field trained.				
9	3.8	Halotron I system: An inline test valve for the Haltron System such that the system can be tested with a very limited waste discharge of agent.				
10	3.9.7	Emergency Warning Lights: All emergency lights and warning devices necessary to meet the requirements of NFPA 1901 for operation on public roadways are equipped on the apparatus. Additionally, emergency warning lights must not shine into the cab in such a way as to affect the driver's or rider's vision during daytime or nighttime operation				

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11	3.10.8	<p>Radio Circuit: In addition to the "circuit for radios" provided in Exhibit A: Advisory Circular 150/5220-10E, Three (3) radios must be included and installed as follows:</p> <ul style="list-style-type: none"> • Two (2) Multiband (700MHz-, 800MHz-, and VHF-capable) APCO P25-compatible (per Lee County, Florida, Public Safety Radio standards) radio transceivers • One (1) Avionic (Aircraft) Band transceiver with Dual-Watch capability. <p>The primary multiband transceiver and the Avionic transceiver must be connected to a wired headset system with headsets for each seating position and be capable of receiving transmissions from both radios simultaneously and transmission from each radio as required by the driver/operator. These radios must also be capable of transmitting and receiving radio traffic without the use of the headsets, using speakers and microphones. The radio circuits must also have proper isolation to reject any electrical interference from items such as the generator, LED lighting, and emergency warning systems.</p>				
12	N/A	<p>Lubrication: A continuous central lubrication system instead of individual fittings.</p>				
13	N/A	<p>Fire Fighting Systems: Undertruck nozzles with a rate of at least 15 GPM, and a minimum of four (4) nozzles.</p>				
14	N/A	<p>Water Tank Fills: Four (4) direct water tank fills: Two (2) each on the left side of the tank and Two (2) each on the right side of the tank to accommodate a 5" Storz and 2½" intakes at the same time</p>				
15	N/A	<p>Agent Piping Systems:</p>				

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		All piping for agents (water/foam) must be stainless steel when possible in order to extend the life of the apparatus and reduce corrosion in a high humidity environment.				
16	N/A	Body: Exterior Water & Foam level lights. These lights must be separated by a distance of at least six feet, where practical, and indicate remaining agent capacity as Full, ¾, ½, or ¼.				
17	N/A	Body: Lockable Compartment Doors with three (3) sets of keys for the purposes of safety & security when the apparatus is out of service or off of the airport.				
18	N/A	Exterior Graphics Package per Exhibit A: Advisory Circular 150/5220-10E, Appendix A.1.2 Addition: 1.3.4 (Please see Table in Exhibit B for details)				
19	N/A	Window Tinting: <u>Front Windshield</u> <ul style="list-style-type: none"> • % Visible Light Transmittance = 71% • % Visible Light Reflectance (Exterior) = 8% • % Ultraviolet Light Blocked = >99% • % Total Solar Energy Rejected (TSER) = 40% <u>Side Windows (All)</u> <ul style="list-style-type: none"> • %Visible Light Transmittance = 38% • % Visible Light Reflectance (Exterior) = 6% • % Ultraviolet Light Blocked = >99% • % Total Solar Energy Rejected (TSER) = 53% 				
20	N/A	Ladder: A 24 foot extendable removable Ladder capable of being mounted to the exterior of the				

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		apparatus for aircraft access.				
21	N/A	Shelving: Adjustable shelving in all storage compartments.				
22	N/A	Documentation: Four (4) physical copies and one (1) electronic copy of all manuals listed in Exhibit A: Advisory Circular 150/5220-10E, Section 3.1.1.				

How many total days are necessary to complete requirements (including delivery) for the Base Bid **and** Requested Additions Based On Local Requirements: _____ calendar days from award of bid.



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 Request for Bids from Lee County Board of Port Commissioners, members of the Airports Special Management Committee or employees of Lee County Port Authority, individually or collectively, regarding this Request for Bids. The prospective Bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. section 1352, 49 CFR Part 20 and Lee County Ordinance No. 03-14 relating to lobbying activities.

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 produced _____ as identification by means of physical presence or on line notarization.

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 BIDDERS 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 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 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____, by _____ by means of physical presence or online notarization 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 5: SCRUTINIZED COMPANIES CERTIFICATION

Bidder hereby certifies under penalties of perjury as of the date of submission of its RFB to provide goods and services to 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 Statutes, that result in Bidder being placed on the Scrutinized Companies that Boycott Israel List, during the term of any contract awarded pursuant to this Request for Bids.

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 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 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 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 _____ by means of physical presence or online notarization 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:



FORM 6: LOCAL PREFERENCE AFFIDAVIT (Continued)

- Not a Local Vendor as defined by Lee County Ordinance 00-10, as amended by Lee County Ordinance 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____, by _____ by means of physical presence or online notarization 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]

[Remainder of page intentionally left blank]



FORM 7: RESPONSE ATTACHMENT FOR BASE BID SPECIFICATIONS

Bidder must indicate below if it “can meet” or “cannot meet” the below requirements for the Base Bid as specified in Exhibit A: Advisory Circular 150/5220-10E. Failure to meet all of the requirements may deem your bid non-responsive and ineligible for award.

			Please Mark an “X” to indicate one of the following for each Line Number	
<u>Line Number</u>	<u>Section Number</u>	<u>Title</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
1	1	Scope		
2	2	Classification		
3	3	Vehicle Conformance/Performance Characteristics		
	3.1	<u>General Administration Requirement</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
4	3.1.1	Manuals		
5	3.1.1.1	Technical Manuals		
6	3.1.1.1.1	Operator’s Manual		
7	3.1.1.1.2	Service Manual		
8	3.1.1.1.3	Parts Identification Manual		
	3.1.2	<u>Painting, Plating, and Corrosion Control</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
9	3.1.2.1	Finish		
10	3.1.2.2	Dissimilar Metals		
11	3.1.2.3	Protection Against Deterioration		
12	3.1.2.4	Reflective Strips		
13	3.1.2.5	Lettering		
14	3.1.3	Vehicle Identification Plate		
	3.1.4	<u>Environmental Conditions</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
15	3.1.4.1	Vehicle Operation and Storage		

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		Temperature		
16	3.1.4.2	Temperature Range		
		<u>Fixtures</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
17	3.1.5	Reduction of Potential Foreign Object Damage		
	<u>3.1.6</u>	<u>Vehicle Mobility</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
18	3.1.6.1	Operating Terrain		
19	3.1.6.2	Gradeability		
20	3.1.6.3	Side Slope Stability		
21	3.1.6.4	Cornering Stability		
	<u>3.2</u>	<u>Weight and Dimensions</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
22	3.2.1	Overall Dimensions		
23	3.2.2	Angles of Approach and Departure		
24	3.2.3	Field of Vision		
25	3.2.3.1	Mirrors		
	<u>3.3</u>	<u>Chassis and Vehicle Components</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
26	3.3.1	Engine		
27	3.3.1.1	Acceleration		
28	3.3.1.2	Maximum Speed		
29	3.3.1.3	Pump and Roll on a 40 percent Grade		
30	3.3.1.4	Altitude		
31	3.3.2	Engine Cooling System		
32	3.3.3	Fuel System		
33	3.3.3.1	Fuel Priming Pump		
34	3.3.3.2	Fuel Tank		
35	3.3.4	Exhaust System		
36	3.3.5	Transmission		
37	3.3.6	Driveline		
38	3.3.7	Axle Capacity		
39	3.3.8	Suspension		
40	3.3.9	Tires and Wheels		
41	3.3.10	Towing Connections		

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42	3.3.11	Brake System		
43	3.3.11.1	Air Dryer		
44	3.3.11.2	Compressed Air Shoreline or Vehicle Mounted Auxiliary Air Compressor		
45	3.3.12	Steering		
46	3.3.12.1	Steering Effort		
47	3.3.12.2	Turning Diameter		
48	3.3.13	License Plate Bracket		
	3.4	Cab	<u>Can Meet</u>	<u>Cannot Meet</u>
49	3.4.1	Windshield and Windows		
50	3.4.2	Cab Interior Sound Level		
51	3.4.3	Instruments and Controls		
52	3.4.4	Windshield Deluge System		
53	3.4.5	Forward Looking Infrared (FLIR)		
54	3.4.6	Climate Control System		
55	3.4.7	Seats		
56	3.4.7.1	Seat Options		
57	3.4.8	Windshield Wipers and Washer		
58	3.4.9	Warning Signs		
59	3.4.10	Lateral Accelerometer and/or Stability Control System		
60	3.4.11	Monitoring and Data Acquisition System (MADAS)		
	3.5	Body, Compartments, and Equipment Mounting	<u>Can Meet</u>	<u>Cannot Meet</u>
61	3.5.1	Body		
62	3.5.2	Compartments		
63	3.5.2.1	Compartment Doors		
64	3.5.2.2	Scuffplates		

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65	3.5.2.3	Drip Rails		
66	3.5.2.4	Shelves		
67	3.5.2.5	Drainage Mats		
68	3.5.3	SCBA Storage Tubes		
69	3.5.4	Ladder, Handrails, and Walkways		
70	3.5.5	Ancillary Equipment		
	<u>3.6</u>	<u>Agent System</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
71	3.6.1	Agent (Fire) Pump		
72	3.6.1.1	Agent System Piping		
73	3.6.1.2	Tank to Pump Connection		
74	3.6.1.3	Piping, Couplings, and Valves		
75	3.6.1.4	Overheat Protection		
76	3.6.1.5	Pressure Relief Valves		
77	3.6.1.6	Drains		
78	3.6.2	Water Tank		
79	3.6.2.1	Water Tank Construction		
80	3.6.2.2	Water Tank Overhead Fill Cover and Drain		
81	3.6.2.3	Water Tank Overflow System and Venting		
82	3.6.2.4	Water Tank Top Fill Opening		
83	3.6.2.5	Water Tank Fill Connections		
84	3.6.3	Foam System		
85	3.6.3.1	Foam Concentrate Tank		
86	3.6.3.1.1	Foam Tank Construction		
87	3.6.3.1.2	Foam Tank Drain		
88	3.6.3.1.3	Foam Tank Top Fill Trough		
89	3.6.3.2	Foam Tank Fill Connections		
90	3.6.3.2.1	Foam Tank Vent		

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		and Overflow System		
91	3.6.3.3	Foam Transfer Pump		
92	3.6.3.4	Foam Flushing System		
93	3.6.3.5	Foam Concentrate Piping		
94	3.6.4	Foam Proportioning System		
95	3.6.5	Primary Vehicle Turret		
96	3.6.5.1	High Reach		
97	3.6.5.2	Extendable Turret		
98	3.6.5.2.1	Video Camera and Monitor		
99	3.6.5.2.2	Aircraft Skin Penetrator		
100	3.6.6	Bumper Turret		
101	3.6.7	Preconnected Handlines		
102	3.6.7.1	Additional Handline		
103	3.6.8	Structural Fire Fighting Capability		
104	3.6.8.1	Structural Panel		
105	3.6.8.2	Structural Fire Fighting Capability Installation		
106	3.6.9	Primary Turret Discharge Nozzle		
107	3.7.2	Halogenated Agent Hose Reel		
	<u>3.8</u>	<u>Halogenated Agent System</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
108	3.8.1	Halotron I Clean Agent System		
109	3.8.2	Halotron I Hose Reel		
110	3.8.3	Halotron I System Charging Cylinder		
		<u>Electrical</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
111	3.9	Electrical System		

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		and Warning Devices		
112	3.9.1	Alternator		
113	3.9.2	Batteries		
114	3.9.2.1	Battery Compartment		
115	3.9.3	Battery Charger or Conditioner		
116	3.9.4	Electromagnetic Interference		
	3.9.5	Work Lighting	Can Meet	Cannot Meet
117	3.9.5.1	Cab Interior Lights		
118	3.9.5.2	Compartment Lights		
119	3.9.5.3	Ladder, Step, Walkway, and Area Lights		
120	3.9.5.4	Spot/Floodlights		
121	3.9.5.5	Flood Lights		
122	3.9.5.6	Scene Lights		
	3.9.6	Audible Warning Devices	Can Meet	Cannot Meet
123	3.9.6.1	Siren		
124	3.9.6.2	Horn		
125	3.9.7	Emergency Warning Lights		
126	3.9.7.1	Emergency Warning Light Color		
127	3.9.7.2	Headlight Flashing System		
128	3.9.8	Radio Circuit		
	3.9.9	Power Receptacles	Can Meet	Cannot Meet
129	3.9.9.1	Primary Power Receptacles		
130	3.9.9.2	Auxiliary Power Receptacles		
131	3.9.9.3	Cable Reel		
132	3.9.10	Auxiliary Generator		
	3.10	Line Voltage Electrical System	Can Meet	Cannot Meet
133	3.10.1	Electrical Shoreline Connection		

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	<u>3.11</u>	<u>Air Systems</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
134	3.11.1	Air Hose Reel		
		<u>Workmanship</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
135	3.12	Quality of Workmanship		
	<u>4</u>	<u>Regulatory Requirement</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
136	4.1	Recoverable Materials		
137	4.2	Green Procurement Program		
	<u>5</u>	<u>Product Conformance Provisions</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
138	5.1	Classification of Inspections		
139	5.2	Performance Inspection		
140	5.3	Conformance Inspection		
141	5.4	Product Conformance		
142	5.5	Technical Proposal		
	<u>5.6</u>	<u>Inspection Requirements</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
143	5.6.1	General Inspection Requirements		
144	5.6.2	Test Rejection Criteria		
	<u>5.6.3</u>	<u>Detailed Inspection Requirements</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
145	5.6.3.1	Examination of Product		
	<u>6</u>	<u>Packaging</u>	<u>Can Meet</u>	<u>Cannot Meet</u>
146	6.1	Preservation, Packing, Marking		
147	6.2	Lubricants and Fluids		
148	6.3	Agents and Propellants		
149	6.4	Operational Readiness and		

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		Ancillary Appliances		
	7	Training	Can Meet	Cannot Meet
150	7.1	Training Sessions by Qualified Technician		
151	7.2	Use, Operation, Maintenance, Test Instructions		
152	7.3	Written, Electronic, or Graphic Operating Instructions		



FORM 8 CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR MANUFACTURED PRODUCTS

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. **Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter “X”.**

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- Only installing steel and manufactured products produced in the United States;
 - Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
- To faithfully comply with providing U.S. domestic product.
- To furnish U.S. domestic product for any waiver request that the FAA rejects
- To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

- To the submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
- That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
- To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
- To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver – The cost of the item components and subcomponents produced in the United States is more that 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:

- Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition

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Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).

- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- c) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

Date

Signature

Company Name

Title



FORM 9: CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

For the purpose of this form, “applicant” refers to the successful bidder.

The applicant must complete the following two certification statements. **The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response.** The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- 1) The applicant represents that it is is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is is not is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government’s interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency’s SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

EXHIBIT A: ADVISORY CIRCULAR 150/5220-10E**VEHICLE PROCUREMENT SPECIFICATION, CLASS 5****PROCUREMENT SPECIFICATION****Class 5****AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) VEHICLE**

1. **SCOPE.** This Procurement Specification (PS) covers a commercially produced diesel engine driven ARFF vehicle for an **Index D** airport. It includes a 3000-4500 gallon water/Aqueous Film Forming Foam (AFFF) fire suppression system: 460 lb Halogenated Agent only complementary system.

The ARFF vehicle is intended to carry rescue and fire fighting equipment for the purpose of rescuing aircraft passengers, preventing aircraft fire loss, and combating fires in aircraft.

2. **CLASSIFICATION.** The ARFF vehicle(s) covered by this PS are classified in accordance with Part 139, Certification and Operations: Land Airports Serving Certain Air Carriers, Section 315, Aircraft Rescue and Firefighting: Index Determination; Section 317, Aircraft Rescue and Firefighting: Equipment and Agents; and Federal Aviation Administration (FAA) Advisory Circular (AC) 150/5220-10, Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles, as follows:

Airport Index	Vehicle Class	Minimum Rated Capacities (gallons/liters)
Index D	5	3000 gallon/11,356 liter water/AFFF solution
Index D	5	3500 gallon/13,249 liter water/AFFF solution
Index D	5	4000 gallon/15,142 liter water/AFFF solution
Index D	5	4500 gallon/17,034 liter water/AFFF solution

3. **VEHICLE CONFORMANCE/PERFORMANCE CHARACTERISTICS.** The ARFF vehicle will be in accordance with the applicable requirements of National Fire Protection Association (NFPA) 414, Standard for Aircraft Rescue and Fire Fighting Vehicles (2007 Edition), and AC 150/5220-10, Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles.

3.1 **General Administration Requirements.**

3.1.1 **Manuals.** Technical manuals will consist of operator, service, and parts manuals. All manuals are required to be provided in hardcopy and in digital format on CDs when requested.

3.1.1.1 **Technical manuals.** The overall format for the manuals will be commercial. Each technical manual will have a title page. Line art will be used to the maximum extent possible for illustrations and parts lists. One complete set of engine and transmission parts, service and operator's manuals will be packed with each vehicle.

- a. The contractor will provide digitized manuals in CD format when requested in addition to or in place of printed paper copies.

- b. The contractor will provide two complete sets of hardcopy manuals and / or CDs when requested.

3.1.1.1.1 Operator's manual. The operator's manual will include all information required for the safe and efficient operation of the vehicle, including fire extinguishing systems, equipment, and any special attachments or auxiliary support equipment. As a minimum, the operator's manual will include the following:

- a. The location and function of all controls and instruments will be illustrated and functionally described.
- b. Safety information that is consistent with the safety standards established by the Occupational Safety and Health Administration (OSHA) and NFPA.
- c. All operational and inspection checks and adjustments in preparation for placing the vehicle into service upon receipt from the manufacturer.
- d. Tie down procedures for transport on a low-boy trailer.
- e. Warranty information and the period of the warranty coverage for the complete vehicle and for any component warranty that exceeds the warranty of the complete vehicle. Addresses and telephone numbers will be provided for all warranty providers.
- f. General description and necessary step-by-step instructions for the operation of the vehicle and its fire extinguishing system(s) and auxiliary equipment.
- g. A description of the post-operational procedures (draining, flushing, re-servicing, et cetera).
- h. Daily maintenance inspection checklists that the operator is expected to perform, including basic troubleshooting procedures.
- i. Disabled vehicle towing procedures.
- j. Procedures and equipment required for changing a tire.
- k. Schedules (hours, miles, time periods) for required preventative maintenance and required periodic maintenance.
- l. Line art drawing of the vehicle, including panoramic views (front, rear, left, and right sides) showing basic dimensions and weights (total vehicle and individual axle weight for the unloaded and fully loaded vehicle). For the purposes of this AC, "unloaded" is defined as a lack of agent, occupants and compartment load, and "loaded" is defined as including agent, occupants and compartment load.

3.1.1.1.2 Service manual. The service manual will identify all special tools and test equipment required to perform servicing, inspection, and testing. The manual will cover

troubleshooting and maintenance as well as minor and major repair procedures. The text will contain performance specifications, tolerances, and fluid capacities; current, voltage, and resistance data; test procedures; and illustrations and exploded views as may be required to permit proper maintenance by qualified vehicle mechanics. The manual will contain an alphabetical subject index as well as a table of contents. The service manual will contain at least the following, where applicable:

- a. Fire fighting system schematic(s).
- b. Hydraulic schematic.
- c. Pneumatic schematic.
- d. Electrical schematic.
- e. Winterization schematic.
- f. Fuel schematic.
- g. Schedules for required preventative maintenance and required periodic maintenance.
- h. Lubrication locations, procedures, and intervals for parts of the vehicle and equipment that require lubrication.

3.1.1.1.3 Parts identification manual. The parts manual will include illustrations or exploded views (as needed) to identify properly all parts, assemblies, subassemblies, and special equipment. All components of assemblies shown in illustrations or exploded views will be identified by reference numbers that correspond to the reference numbers in the parts lists. All purchased parts will be cross-referenced with the original equipment manufacturer's (OEM) name and part number. The parts identification manual will provide the description and quantity of each item used for each vehicle. The size, thread dimensions, torque specifications, and special characteristics will be provided for all nonstandard nuts, bolts, screws, washers, grease fittings, and similar items. The manual will contain a numerical index. The parts manual will contain a list of all of the component vendor names, addresses, and telephone numbers referenced in the parts list.

3.1.2 Painting, plating, and corrosion control.

3.1.2.1 Finish. Exterior surfaces will be prepared, primed, and painted in accordance with all of the paint manufacturer's instructions and recommendations. Vehicles will be painted and marked in accordance with AC 150/5210-5, Painting, Marking, and Lighting of Vehicles Used on an Airport. The interior finish of all compartments will be based on the manufacturer's standard production practice. This may include painting, texturing, coating or machine swirling as determined by the manufacturer. All bright metal and anodized parts, such as mirrors, horns, light bezels, tread plates, and roll-up compartment doors, will not be painted. All other surfaces capable of being painted must be in the appropriate yellow-green color.

3.1.2.2 Dissimilar metals. Dissimilar metals, as defined in MIL-STD-889, Dissimilar Metals, will not be in contact with each other. Metal plating or metal spraying of dissimilar base metals to provide electromotively compatible abutting surfaces is acceptable. The use of dissimilar metals separated by suitable insulating material is permitted, except in systems where bridging of insulation materials by an electrically conductive fluid can occur.

3.1.2.3 Protection against deterioration. Materials that deteriorate when exposed to sunlight, weather, or operational conditions normally encountered during service will not be used or will have a means of protection against such deterioration that does not prevent compliance with performance requirements. Protective coatings that chip, crack, or scale with age or extremes of climatic conditions or when exposed to heat will not be used.

3.1.2.4 Reflective stripes. A minimum eight (8) inch horizontal band of high gloss white paint or white reflective tape (Retroreflective, ASTM-D 4956-09, *Standard Specification for Retroreflective Sheeting for Traffic Control*, TYPE III & above) must be applied around the vehicle's surface.

3.1.2.5 Lettering. The manufacturer will apply the airport's 'Name' and 'Insignia' (if available) in a contrasting color or by decal on both sides of the vehicle in long radius elliptical arches above and below the lettering center line. The size of the lettering will be a minimum of 2½-inches to a maximum of 6-inches. Reflective lettering is allowed if the material is the same as that which is used for the reflective stripe (as specified in AC 150/5210-5).

3.1.3 Vehicle identification plate. A permanently marked identification plate will be securely mounted at the driver's compartment. The identification plate will contain the following information:

- a. NOMENCLATURE
- b. MANUFACTURER'S MAKE AND MODEL
- c. MANUFACTURER'S SERIAL NUMBER
- d. VEHICLE CURB WEIGHT: kg (pounds)
- e. PAYLOAD, MAXIMUM: kg (pounds)
- f. GROSS VEHICLE WEIGHT (GVW): kg (pounds)
- g. FUEL CAPACITY AND TYPE: gals (gallons)
- h. DATE OF DELIVERY (month and year)
- i. WARRANTY (months and km (miles))
- j. CONTRACT NUMBER
- k. PAINT COLOR AND NUMBER

A second permanently marked information data plate will be securely mounted on the interior of the driver's compartment. The plate will contain the information required by NFPA 414, Standard for Aircraft Rescue and Fire Fighting Vehicles (2007 Edition), Section 1.3.5 Vehicle Information Data Plate. A single plate that combines or contains the information required for both plates is acceptable.

3.1.4 Environmental conditions.

3.1.4.1 Vehicle operation and storage temperature conditions will vary with geographical location. Thus, the locality temperature range can go from -40° to 110°F. Refer to NFPA 414 for vehicle winterization criteria.

3.1.4.2 Temperature range. The vehicle will be capable of satisfactory storage and operation in temperatures ranging from 33° to 110°F. The vehicle will be equipped with a cab, chassis, and agent winterization system, permitting operation at 33°F. The winterization system will not detract from the performance of the vehicle or the firefighting system in ambient temperatures up to 110°F.

3.1.5 Reduction of potential foreign object damage. All loose metal parts, such as pins, will be securely attached to the vehicle with wire ropes or chains. Removable exterior access panels, if provided, will be attached with captive fasteners.

3.1.6 Vehicle Mobility.

3.1.6.1 Operating terrain. The vehicle will be capable of operating safely on paved roads, graded gravel roads, cross country terrain, and sandy soil environments. Cross country terrain consists of open fields, broken ground, and uneven terrain. An off-road, high-mobility suspension system resulting in no more than 0.5 G_{rms} acceleration at the driver's seat of the vehicle when traversing an 8-inch (20 cm) diameter half round at 35 mph (56 kph) must be provided. The suspension design by which the manufacturer meets the suspension performance requirements is at the manufacturer's discretion.

3.1.6.2 Gradeability. The fully loaded vehicle will be able to ascend any paved slope up to and including 50-percent.

3.1.6.3 Side slope stability. The fully loaded vehicle will be stable on a 30° side slope when tested in accordance with NFPA 414.

3.1.6.4 Cornering stability. The fully loaded vehicle will be stable in accordance with NFPA 414 when tested in accordance with NFPA 414.

3.2 Weights and dimensions.

3.2.1 Overall dimensions. The maximum dimensions listed below are desirable to ensure vehicles can be accommodated in existing fire stations. Likewise, the overall dimensions should be held to a minimum that is consistent with the best operational performance of the vehicle and the design concepts needed to achieve this performance and to provide maximum maneuverability in accordance with NFPA 414.

Vehicle Capacity /Dimensions	3000 Gallon	4500 Gallon
Length (inches/cm)	480/1219	540/1372
Width (inches/cm, excluding mirrors)	124/315	122/310
Height (inches/cm)	154/391	154/391

NOTE: For Airport Operator Validation: Consult AC 150/5210-15, Aircraft Rescue and Fire Fighting Station Building Design, Appendix A, to ensure vehicles measurements do not exceed existing airport fire station dimensions.

<u>VEHICLE MEASUREMENT VALIDATION</u>
Not applicable.
ADO/FAA Approval: ⇒ _____

3.2.2 Angles of approach and departure. The fully loaded vehicle will have angles of approach and departure of not less than 30°.

3.2.3 Field of vision. The vehicle will have a field of vision in accordance with NFPA 414.

3.2.3.1 Mirrors. Combination flat and convex outside rearview mirrors will be installed on each side of the cab. The flat mirrors will be of the motorized remote control type, providing not less than 60° horizontal rotational viewing range. The flat mirrors will also have electrically heated heads. Mirror remote and heating controls will be located on the instrument panel within reach of the seated driver. To provide the driver a clear view of the area ahead of the vehicle and to eliminate potential blind spots, a rectangular mirror will be installed on the lower corner of each side of the windshield, having a minimum area of 35 square inches.

The vehicle will have a back-up (rear-view) camera with a display monitor mounted above the driver in the cab. Cameras and monitors that are designed to replace the function of the side-view mirrors are not an approved option in this specification.

3.3 Chassis and vehicle components.

3.3.1 Engine. The vehicle will have a turbocharged diesel engine that is certified to comply with the Environmental Protection Agency (EPA) and state laws for off-highway emission requirements at the time of manufacture. The engine and transmission must operate efficiently and without detrimental effect to any drive train components when lubricated with standard, commercially available lubricants according to the recommendations of the engine and transmission manufacturers.

3.3.1.1 Acceleration. The fully loaded vehicle will accelerate from 0 to 50 miles per hour (mph) on a level paved road within 35 seconds.

3.3.1.2 Maximum speed. The fully loaded vehicle will attain a minimum top speed of 70 mph on a level, paved road.

3.3.1.3 Pump and roll on a 40-percent grade. The fully loaded vehicle will be capable of pump and roll operations on a paved, dry, 40-percent grade in accordance with NFPA 414.

3.3.1.4 Altitude. Where justified, the vehicle, including the pumping system, will be designed for operation at 2,000 feet above sea level.

JUSTIFICATION
Not Applicable
ADO/FAA Approval: ⇒ _____

3.3.2 Engine cooling system. The engine cooling system will be in accordance with NFPA 414. A label will be installed near the engine coolant reservoir reading “Engine Coolant Fill.”

3.3.3 Fuel system. The fuel system will be in accordance with NFPA 414.

3.3.3.1 Fuel priming pump. The vehicle will be equipped with an electric or pneumatic fuel pump in addition to the mechanical fuel pump. The electric/pneumatic pump will be used as a priming pump capable of re-priming the engines fuel system.

3.3.3.2 Fuel tank. The vehicle will have one or two fuel tanks with a minimum usable capacity in accordance with NFPA 414, as amended by NFPA 414. Each tank will have a fill opening of 3 inches minimum, readily accessible to personnel standing on the ground and designed to prevent fuel splash while refueling. Each tank will be located and mounted so as to provide maximum protection from damage, exhaust heat, and ground fires. If more than one tank is furnished, means will be provided to assure equalized fuel level in both tanks. An overturn fuel valve will be provided for each tank to prevent spillage in the event of a rollover. Each fuel tank must be prominently labeled "Diesel Fuel Only".

3.3.4 Exhaust system. The exhaust system will be in accordance with NFPA 414. The exhaust system will be constructed of high grade rust resistant materials and protected from damage resulting from travel over rough terrain. The muffler(s) will be constructed of aluminized steel or stainless steel. Exhaust system outlet(s) will be directed upward or to the rear, away from personnel accessing equipment compartments and the engine air intake, and will not be directed toward the ground.

3.3.5 Transmission. A fully automatic transmission will be provided. The transmission will be in accordance with NFPA 414.

3.3.6 Driveline. The vehicle driveline will be in accordance with NFPA 414. If the driveline is equipped with a differential locking control, a warning/caution label will be placed in view of the driver indicating the proper differential locking/un-locking procedures. The operator's manual will also include a similar warning/caution. All moving parts requiring routine lubrication must have a means of providing for such lubrication. There must be no pressure lubrication fittings where their normal use would damage grease seals or other parts.

3.3.7 Axle capacity. Each axle will have a rated capacity, as established by the axle manufacturer, in accordance with NFPA 414.

3.3.8 Suspension. The suspension system will be in accordance with NFPA 414 and AC 150/5220-10, Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles.

3.3.9 Tires and wheels. Tires and wheels will be in accordance with NFPA 414. The vehicle will be equipped with single tires and wheels at all wheel positions. The vehicle will be equipped with tubeless steel belted radial tires with non-directional on/off-road type tread mounted on disc wheel assemblies. Tire and wheel assemblies will be identical at all positions. Tires and wheels will be certified by the manufacturer for not less than 25 miles of continuous operation at 60 mph at the normal operational inflation pressure. A spare tire and wheel assembly will be provided; however, the spare tire and wheel assembly are not required to be mounted on the vehicle. Tires will be new. Retreads, recaps, or re-grooved tires will not be permitted.

Tire bead locks, where justified, may be installed on all tires and rims.

<u>JUSTIFICATION</u>
For use in swampy / muddy / sandy environments surrounding the airfield.
ADO/FAA Approval: ⇒ _____

3.3.10 Towing connections. The vehicle will be equipped with towing connections in accordance with NFPA 414. The vehicle will be designed for flat towing; the capability to lift and tow the vehicle is not required. The tow connections may intrude into the 30 degree approach angle.

3.3.11 Brake system. The vehicle will be equipped with a multi-channel all-wheel antilock brake system with at least one channel for each axle. The brakes will be automatic, self-adjusting and fully air-actuated. Brakes will be in accordance with CFR 49 CFR 393.40 through 393.42(b)), 393.43, and 393.43 through 393.52. The braking system, complete with all necessary components will include:

- a. Air compressor having a capacity of not less than 16 standard cubic feet per minute (scfm).
- b. Air storage reservoir(s), each tank equipped with drain (bleed) valves, and with safety and check valves between the compressor and the reservoir tank.
- c. Automatic moisture ejector on each air storage reservoir. Manual air tank drains are acceptable if they are labeled, are centrally located in one compartment and are accessible by an individual standing at the side of the vehicle.
- d. Automatic slack adjusters on cam brakes or internal self-adjusting brakes on wedge brakes on all axles.
- e. Spring set parking brakes.

All components of the braking system will be installed in such a manner as to provide adequate road clearance when traveling over uneven or rough terrain, including objects liable to strike and cause damage to the brake system components. No part of the braking system will extend below the bottom of wheel rims, to ensure, in case of a flat tire, that the weight of the vehicle will be supported by the rim and the flat tire and not be imposed on any component of the braking system. Slack adjusters and air chambers will be located above the bottom edge of the axle carrier.

3.3.11.1 Air dryer. A replaceable cartridge desiccant air dryer will be installed in the air brake system. The dryer will have the capability of removing not less than 95 percent of the

moisture in the air being dried. The dryer will have a filter to screen out oil and solid contaminants. The dryer will have an automatic self-cleaning cycle and a thermostatically controlled heater to prevent icing of the purge valve.

3.3.11.2 Compressed air shoreline or vehicle-mounted auxiliary air compressor. A flush mounted, check valved, auto-eject compressed air shoreline connection will be provided to maintain brake system pressure while the vehicle is not running. The shoreline will be flush mounted (not to extend outside the body line), located on the exterior of the vehicle, either on the left side rear corner of the cab, or at the rear of the vehicle. In lieu of a compressed air shoreline connection, the vehicle may be equipped with a 110 volt shoreline connected vehicle-mounted auxiliary air compressor. In lieu of a compressed air shoreline connection, the vehicle may be equipped with an electrical shoreline connected vehicle mounted auxiliary air compressor.

3.3.12 Steering. The vehicle will be equipped with power steering. Rear-wheel steering technology is not an approved vehicle option.

3.3.12.1 Steering effort. The steering system performance will be in accordance with NFPA 414.

3.3.12.2 Turning diameter. The fully loaded vehicle will have a wall to wall turning diameter of less than three times the overall length of the vehicle in both directions in accordance with NFPA 414.

3.3.13 License plate bracket. A lighted license plate bracket will be provided at the left rear and left front of the vehicle. The location of the left front bracket will be placed so as not to interfere with the operation of fire fighting systems.

3.4 Cab. The vehicle will have a fully enclosed two door cab of materials which are corrosion resistant, such as aluminum, stainless steel, or glass reinforced polyester construction. Steps and handrails will be provided for all crew doors, and at least one grab handle will be provided for each crew member, located inside the cab for use while the vehicle is in motion. The lowermost step(s) will be no more than 22 inches above level ground when the vehicle is fully loaded. A tilt and telescoping steering column will be provided.

3.4.1 Windshield and windows. The windshield and windows will be of tinted safety glass. Each door window will be capable of being opened far enough to facilitate emergency occupant escape in the event of a vehicle accident. The vehicle windows will have an electric control system.

3.4.2 Cab interior sound level. The maximum cab interior sound level will be in accordance with NFPA 414.

3.4.3 Instruments and controls. All instruments and controls will be illuminated and designed to prevent or produce windshield glare. Gauges will be provided for oil pressure, coolant temperature, and automatic transmission temperature. In addition to the instruments and controls required by NFPA 414, the following will be provided within convenient reach of the seated driver:

- a. Master warning light control switch,
- b. Work light switch(es), and
- c. Compartment "Door Open" warning light and intermittent alarm that sounds when a compartment door is open and the parking brakes are released or the transmission is in any position other than neutral.

3.4.4 Windshield deluge system. The vehicle will be equipped with a powered windshield deluge system. The deluge system will be supplied from the agent water tank and will have an independent pumping system. The deluge system activation switch will be located within reach of the seated driver and turret operator.

3.4.5 Forward Looking Infrared (FLIR). A forward looking infrared (FLIR) camera and in-cab monitor, meeting the requirements of NFPA 414, will be provided. In addition, the FLIR monitor described in NFPA 414 will have a minimum dimension of 10 in (25 cm) (measured diagonally) and be located in a position where it is visible to both the seated driver and turret operator.

3.4.6 Climate control system. The offeror/contractor's standard heater/defroster and air conditioning system will be provided. The climate control system will induct at least 60 cubic feet per minute of fresh air into the cab. Cab mounted components will be protected from inadvertent damage by personnel.

3.4.7 Seats. The driver seat will be adjustable fore and aft and for height. The turret operator's seat, located to the right front of the driver's seat, will be a fixed (non-suspension) type. Each seat will be provided with a Type 3 seat belt assembly (i.e., 3-point retractable restraint) in accordance with CFR 49 CFR 571.209. Seat belts must be of sufficient length to accommodate crew members in full Personal Protective Equipment (PPE).

3.4.7.1. Seat Options. Two types of seat options are allowed in the vehicle. A standard seat contains a hard/fixed back. For these seats, a remote-mounted bracket designed to store a Self-Contained Breathing Apparatus (SCBA) will be provided. The remote-mounted bracket for the driver and turret operator (at a minimum) must be placed inside the cab. The brackets for seat positions #3 and #4 may be placed outside of the cab if necessary. An SCBA seat, on the other hand, contains an opening which can accommodate someone wearing an SCBA. The chart below represents the user's stated preference for the vehicle seating configuration.

Position	Standard	SCBA-Seat	N/A
Driver	X		
Turret		X	
# 3		X	
# 4		X	

<u>JUSTIFICATION</u>
Driver, plus two riders and one officer for operational prudence.
ADO/FAA Approval: → _____

3.4.8 Windshield wipers and washer. The vehicle will be equipped with electrically powered windshield wipers. The wiper arms and blades will be of sufficient length to clear the windshield area described by SAE J198, Windshield Wiper Systems - Trucks. Individual wiper controls will include a minimum of two speed settings and an intermittent setting. The wiper blades will automatically return to a park position, out of the line of vision. The vehicle will be equipped with a powered windshield washer system, including an electric fluid pump, a minimum one gallon fluid container, washer nozzles mounted to the wiper arms (wet arms), and a momentary switch.

3.4.9 Warning signs. Signs that state "Occupants must be seated and wearing a seat belt when apparatus is in motion" will be provided in locations that are visible from each seated position in accordance with NFPA 414."

3.4.10 Lateral accelerometer and/or stability control system. The vehicle will be equipped with a lateral accelerometer and/or an electronic stability control system in accordance with NFPA 414.

3.4.11 <u>Monitoring and Data Acquisition System (MADAS).</u> The vehicle will be equipped with a MADAS as prescribed by NFPA 414.
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3.5 Body, compartments, and equipment mounting.

3.5.1 Body. The vehicle will have a corrosion-resistant body.

3.5.2 Compartments. The vehicle body will have lighted compartments in accordance with NFPA 414 with a minimum of 10 cubic feet of enclosed storage space.

3.5.2.1 Compartment doors. Storage compartments will have clear anodized aluminum, counterbalanced, non-locking, roll-up or single hinged doors as determined by the manufacturer. Door latch handles on roll-up doors will be full-width bar type. Door straps will be provided to assist in closing the compartment doors when the rolled up or hinged door height exceeds six feet above the ground.

3.5.2.2 Scuffplates. Replaceable scuffplates will be provided at each compartment threshold to prevent body damage from sliding equipment in and out of the compartments. The

scuffplates will be securely attached to the compartment threshold but will be easily replaceable in the event of damage.

3.5.2.3 Drip rails. Drip rails will be provided over each compartment door.

3.5.2.4 Shelves. An adjustable and removable compartment shelf will be provided for every 18 inches of each vertical storage compartment door opening. Shelving adjustments will require no more than common hand tools, and will not require disassembly of fasteners. Shelves will support a minimum of 200 pounds without permanent deformation. Each shelf will be accessible to crew members standing on the ground or using a pull out and tip-down configuration. Each shelf will have drain holes located so as to allow for drainage of any water from the stowed equipment.

3.5.2.5 Drainage mats. Each compartment floor and shelf will be covered with a removable black mat designed to allow for drainage of any water from the stowed equipment.

3.5.3 SCBA storage tubes. A single compartment or tubes for storage of four SCBA bottles will be provided. If tubes are provided, two will be installed on each side of the vehicle. The tubes will be of sufficient size to accommodate the procuring agencies SCBA cylinders.

3.5.4 Ladder, handrails, and walkways. Ladder, stepping, standing, and walking surfaces will be in accordance with NFPA 414. Handrails will be provided in accordance with NFPA 414. The lowermost step(s) or ladder rungs will be no more than 22 inches (56 cm) above level ground when the vehicle is fully loaded. The lowermost steps may extend below the angle of approach or departure or ground clearance limits if they are designed to swing clear. The tread of the bottom steps must be at least 8 inches (20 cm) in width and succeeding steps at least 16 inches (40 cm) in width. The full width of all steps must have at least 6 inches (15 cm) of unobstructed toe room or depth when measured from, and perpendicular to, the front edge of the weight-bearing surface of the step.

3.5.5 Ancillary equipment. Ancillary equipment listed in NFPA 414 A.4.2.1 (1)-(17) is not covered by this Procurement Specification in accordance with AC 150/5220-10, Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles. Ancillary equipment is funded separately by other sources.

NOTE: Equipment funding will be obtained as a separate contract under the provisions of AC 150/5210-14, Aircraft Rescue and Fire Fighting Equipment, Tools, and Clothing.

3.6 Agent system.

3.6.1 Agent (fire) pump. The vehicle will be equipped with a centrifugal pump capable of providing the performance specified herein as prescribed by NFPA 414.

3.6.1.1 Agent system piping. All piping, couplings, and valves and associated components that come into contact with the agent will be in accordance with NFPA 414.

3.6.1.2 Tank to pump connection. A check valve and shutoff valve will be provided in each tank to pump line.

3.6.1.3 Piping, couplings, and valves. All agent system piping will conform to NFPA 414 criteria.

3.6.1.4 Overheat protection. The agent system will be equipped with an overheat protection system in accordance with NFPA 414. Overheat protection is not required on vehicles utilizing a pre-mixed pressurized foam system.

3.6.1.5 Pressure relief valves. The agent system will be equipped with pressure relief valves in accordance with NFPA 414.

3.6.1.6 Drains. The agent system will be equipped with a drainage system in accordance with NFPA 414.

3.6.2 Water tank. The vehicle will have a water tank with a manufacturer certified minimum capacity of at least 3000 gallons.

3.6.2.1 Water tank construction. The water tank will be constructed of passivated stainless steel, polypropylene, or Glass Reinforced Polyester (GRP) construction. All materials used will be capable of storing water, foam concentrate, and water/AFFF solutions.

3.6.2.2 Water tank overhead fill cover and drain. The water tank will be equipped with a 20 inch fill tower. The tower will be designed to allow for video inspection of the water tank interior. The water tank will incorporate a drainage system in accordance with NFPA 414.

3.6.2.3 Water tank overflow system and venting. The water tank will incorporate a venting system to relieve pressure on the tank during fill and discharge operations at maximum flow rates. It will have an overflow system to relieve excess fluid in the event of tank overflow. Drainage from the vent and overflow system will not flow over body panels or other vehicle components and will not be in the track of any of the tires. Tank vent hoses will be of the non-collapsible type.

3.6.2.4 Water tank top fill opening. A top fill opening of not less than 8 inches internal diameter with a readily removable ¼-inch mesh strainer will be provided. The fill opening may be incorporated as part of the manhole cover, and will be sized to accommodate a 2½-inch fill hose.

3.6.2.5 Water tank fill connections. The water tank will incorporate National Hose thread connections and will be in accordance with NFPA 414. If the vehicle is fitted with the "structural fire fighting capability option," the additional requirements listed in paragraph 3.6.8 must be incorporated.

3.6.3 Foam system. (NOTE: *The requirements of section 3.6.3 do not apply to pre-mixed pressurized foam systems.*)

3.6.3.1 Foam concentrate tank. The foam concentrate tank(s) will have a manufacturer certified working capacity sufficient for two tanks of water at the maximum tolerance specified in NFPA 412, Standard for Evaluating Aircraft Rescue and Fire-Fighting Foam Equipment for 3 to 6 percent foam concentrate (i.e., 7.0-percent).

3.6.3.1.1 Foam tank construction. The foam tank will be constructed of passivated stainless steel, polypropylene, or GRP construction. All materials used will be capable of storing foam concentrate.

3.6.3.1.2 Foam tank drain. The foam tank will incorporate a drain and drain valve. The valve will be on the left side of the vehicle and controlled by a crew member standing on the ground. The drain line will have a minimum 1½-inch I.D. The foam tank drain outlet will be located so that the contents of the tank can be drained into 5-gallon cans and 55-gallon drums.

3.6.3.1.3 Foam tank top fill trough. The foam tank will incorporate a top fill trough mounted in the top of the tank readily accessible to at least two crew members on top of the vehicle. The top fill trough will incorporate a cover, latch, and sealed so as to prevent spillage under any operating condition. The top fill trough will be designed to allow two standard 5-gallon foam concentrate containers to be emptied simultaneously. The top fill trough neck will extend sufficiently close to the bottom of the tank to reduce foaming to a minimum during the fill operation. The top fill trough will incorporate readily removable, rigidly constructed 10 mesh stainless steel, brass or polyethylene strainers. All components in and around the top fill trough will be constructed of materials that resist all forms of deterioration that could be caused by the foam concentrate or water.

3.6.3.2 Foam tank fill connections. The foam tank will incorporate a 1.5-inch National Hose thread female hose connection on both sides of the vehicle to permit filling by an external transfer hose at flow rates up to 25-gpm. The connections will be provided with chained-on long handled plugs or rocker lug plugs. The top of the connections will be no higher than 48 inches above the ground and readily accessible. The fill lines will incorporate check valves and readily removable, rigidly constructed ¼-inch mesh strainers. All components in the foam tank fill system will be constructed of materials that resist all forms of deterioration that could be caused by the foam concentrate or water.

3.6.3.2.1 Foam tank vent and overflow system. The foam tank will incorporate a vent system to relieve pressure on the tank during fill and discharge operations at maximum flow rates and an overflow system to relieve excess liquid in the event of tank overflow. Drainage from the vent and overflow system will not flow over body panels or other vehicle components and will not be in front of or behind any of the tires. Tank vent hoses will be of the non-collapsible type.

3.6.3.3 Foam transfer pump. A foam transfer pump will be provided and mounted in a compartment on the vehicle. The pump will be capable of transferring and drawing foam liquid concentrate at adjustable flow rates up to 25-gpm directly through the pump and loading connections (see 3.6.3.2). All materials and components that come in contact with the foam will be compatible with the foam concentrate. The pump and its plumbing will have provisions for flushing with water from the water tank. A suitable length of hose with appropriate connections will be provided for filling the foam tank from an external foam storage container.

3.6.3.4 Foam flushing system. The foam concentrate system will be designed in accordance with NFPA 414 so that the system can be readily flushed with clear water.

3.6.3.5 Foam concentrate piping. All metallic surfaces of the piping and associated components that come into contact with the foam concentrate will be of brass, bronze, or passivated stainless steel. The foam concentrate piping will be in accordance with NFPA 414.

3.6.4 Foam proportioning system. The vehicle will have a foam proportioning system for Aqueous Film-Forming Foam (AFFF) (whether 3- or 6-percent foam concentrate) in accordance with NFPA 414. If a fixed orifice plate system is used, a plate will be provided for each percentage foam concentrate; the additional plate will be securely mounted in a protected location on the vehicle. A fire vehicle mechanic will be able to interchange the plates using common hand tools.

3.6.5 Primary vehicle turret. The vehicle will be equipped with a standard roof-mounted turret, high reach extendable turret, and/or high flow bumper mounted turret to serve as the primary source of agent delivery, as specified below:

3.6.5.1. The vehicle will be equipped with a high reach extendable turret (capable of penetrating the second level of the New Large Aircraft (NLA) class of aircraft, in accordance with paragraph 3.6.5.2. The NLA class aircraft are equivalent to the 'Airplane Design Group VI' category, as specified in AC 150/5300-13, Airport Design.

NOTE: AC 150-5220-10 allows one vehicle equipped with a high reach extendable turret for an Index B-E airport at each airport station.

3.6.5.2 High Reach Extendable Turret (capable of penetrating all aircraft except the second level of an NLA). The high reach extendable turret (HRET) must be in accordance with NFPA 414 and will have the vertical and horizontal reach necessary to service the highest placed engine of the aircraft being serviced. It will have a non-air-aspirating, constant flow, variable stream nozzle with dual flow rates for foam or water rated as specified in NFPA 414. The discharge pattern will be infinitely variable from straight stream to fully dispersed. The type of nozzle or turret drain will be per the manufacturer's recommendation. The ET will be controlled by one or two joysticks, each with a pistol grip handle, positioned for use by the driver and the crew member seated to the right of the driver (the turret operator). The cab design will provide clear visibility of the turret to both the driver and the turret operator with the turret in any position.

3.6.5.2.1 Video camera and monitor. The HRET will be equipped with a remote video camera and a cab mounted monitor. The system will be a complete video system consisting of a single color camera equipped with auto-focus and a cab controlled zoom. The camera/lens assembly will be protected from the heat of the fire and from the same climatic extremes as the truck. A color video monitor with a minimum dimension of 10 inches (measured diagonally) will be positioned in the cab within view of both the driver's and the turret operator's seated positions. One monitor may be provided for both the FLIR (see 3.4.5) and the camera with a switch to change between the FLIR and the camera.

3.6.5.2.2 Aircraft skin penetrator. The HRET will be equipped with an aircraft skin penetrator and agent application tool. The skin penetrator will be a minimum of 20 inches long, installed at the tip of the HRET, and connected to the water/AFFF agent discharge line. Agent application through the skin penetrator will be controlled from the cab. NOTE: If a high reach extendable turret is specified by the purchaser, a skin penetrating nozzle must be provided. The penetrating nozzle must be movable to allow for proper alignment of the penetrator to the aircraft fuselage for piercing operations. It must be capable of the minimum water/flow rate and pattern requirements of NFPA 414, Tables 4.1.1(c) and 4.1.1(d).

3.6.6 Bumper turret. The vehicle will be equipped with a joystick controlled, constant flow, non-air-aspirating, variable stream type:

low angle high volume dual rate (minimum 600/1200 GPM) bumper turret.
The bumper turret will be capable of discharging at a minimum flow rate of foam or water as specified by the user, with a pattern infinitely variable from straight stream to fully dispersed. The bumper turret will be capable of automatic oscillation, with the range of oscillation adjustable up to 90° each side of center (left and right) with vertical travel capabilities of +45°/-20° meeting section 4.20.2 in NFPA 414.

3.6.7 Preconnected handline(s). Two 200 foot, 1¾-inch pre-connected woven jacket handline(s), with a 1½-inch control valve and a pistol grip nozzle, will be located on (or accessible from) each side of the vehicle. A safety system will be provided to prevent charging of the hose until the hose has been fully deployed. The handline(s) and nozzle(s) will be in accordance with NFPA 414, and will allow for a minimum of 95 gpm at 100 psi nozzle pressure. A control for charging each handline will be provided for operation by both the driver and the turret operator.

3.6.7.1 In addition, the vehicle will be equipped with the following handline: 150 feet of 1-inch halogenated agent hose on a reel.

3.6.8. Structural fire fighting capability. The vehicle will be equipped with an agent system structural control panel, on the left side of the vehicle, operable while standing on the ground. Structural panel activation will be interlocked to operate only with the vehicle parking brakes set and the transmission in neutral position. Controls and instruments will be grouped by function. The control panel will be hinged or accessible from the rear for maintenance. Instruments will be lighted for night operation.

3.6.8.1 The structural panel will include, as a minimum, the following:

- a. Panel activation switch, including the panel lights.
- b. Engine tachometer.
- c. Engine oil pressure gauge with low pressure warning light.
- d. Engine coolant temperature gauge with high temperature warning light.
- e. A liquid filled gauge, or digital indicator for pump suction, -30 inches Hg vacuum to 600 psi.
- f. A liquid filled gauge, or digital indicator for pump pressure, 0 to 600 psi.
- g. An adjustable pump pressure using either an electronic pressure governor or manual control with a relief valve will be provided.
- h. Foam or water selection.
- i. Water and foam tank liquid level indicators, located adjacent to the water and foam tank fills.

3.6.8.2 The structural fire fighting capability will also require installation of the following items:

- a. A priming pump and control (for drafting using the large intake connection).
- b. Water tank isolation valve.
- c. Discharge connections. Two 2½-inch discharge connections with male National Hose threads will be provided. One 2½-inch discharge will be provided on each side of the vehicle. Each connection will be equipped with a cap, a quarter-turn control valve, a bleeder valve, and a pressure gauge. Each connection will be rated at 250-gpm minimum.
- d. Intake connections. The vehicle will be equipped with one valved 4½-inch intake connection on the left side. The vehicle will be equipped with one valved 2½-inch intake connection on the left side adjacent to the 4½-inch intake connection with both having either a 30° or 45° turn-down fitting. The 4½-inch intake connection will have male National Hose threads, a quarter-turn control valve, a bleeder valve, a strainer, and a cap. The 2½-inch intake connection will have rocker lug female National Hose threads, a quarter-turn control valve, a bleeder valve, a strainer, and a plug. The vehicle will be capable of filling its water tank by pumping from a draft, a hydrant, or a nurse truck through either of the intake connections without the use of a hose from a discharge connection to a tank fill connection.

3.6.9 Primary turret discharge nozzle. The vehicle will be equipped with a halogenated agent only discharge on the primary turret mounted on the cab roof/penetrating nozzle.

3.7 Not applicable.

3.7.1 Not applicable.

3.7.2 Halogenated agent hose reel. A hose reel, equipped with at least 150 feet of halogenated agent hose, will be mounted in a compartment. Handline agent and purge controls will be mounted in or adjacent to the compartment. All electrical components will be sealed against entry of water. The hose reel will have both electric and manual rewind provisions. The manual rewind handle will be bracket mounted and stored in the compartment. A quick acting control will be provided to activate the handline from the cab of the vehicle.

3.8 Halogenated agent system.

3.8.1. A 460 lb. Halotron I clean agent system including an agent storage container, a hose reel and an argon propellant cylinder will be provided. The agent storage container will conform to ASME standards for unfixed pressure vessels. The system will be capable of discharging a minimum of 90% of the containerized agent without flow fluctuations or interruptions. The propellant gas cylinder will be replaceable within fifteen minutes by two crew members standing on the ground and be equipped with a cylinder replacement hoisting system. The propellant gas cylinder will be secured to withstand off-road operations. A pressure indicator will be visible to any person opening the tank fill cap. Blow-down piping will be directed beneath the vehicle. The Halotron I agent tank will include lifting rings and will have a nameplate indicating, as a minimum, the following:

- a. Extinguishing agent.
- b. Capacity.
- c. Weight full.
- d. Weight empty.
- e. Operating pressure.
- f. Hydrostatic test date.
- g. Type of agent required for re-servicing.

3.8.2. Halotron I hose reel. A Halotron I hose reel will be provided in a compartment on the side of the vehicle. The reel will include 150 ft. of 1 in. booster type hose and an appropriate nozzle. The hose reel will be equipped with an electric rewind motor with manual rewind provisions and rollers to facilitate hose deployment. A tension device will be installed to prevent the hose from inadvertently unreeling. The nozzle will be capable of discharging a minimum of 5 lb./ sec. of Halotron I agent in accordance with the performance requirements of the A/C. Controls at the reel will allow charging of the Halotron I agent in the agent storage container, and into the handline.

3.8.3. Halotron I system charging cylinder. One (1) 400 cu. ft. argon cylinder with an integral pressure gauge bottle will be provided for discharging the vehicle mounted Halotron I system. One (1) spare 400 cu. ft. argon cylinder will be provided. Each cylinder will have sufficient capacity to discharge all of the Halotron I agent in the agent storage container and perform a blow down operation of the system without requiring a cylinder change. A means of lifting the argon cylinder to its stored position or lowering it to ground level will be provided. The design will be such that it will allow one person to safely perform the argon cylinder re-servicing on the vehicle. The lifting/lowering mechanism will be stored on the vehicle adjacent to the nitrogen cylinder storage area. This storage provision must accommodate for the braking and for the high G forces experienced during off road travel as described in this specification.

3.9 Electrical systems and warning devices. The vehicle will have a 12-volt or 24-volt electrical and starting system in accordance with NFPA 414.

3.9.1 Alternator. An appropriate charging system, in accordance with NFPA 414, will be provided. The minimum continuous electrical load will include operation of the air conditioning system.

3.9.2 Batteries. Batteries will be of the maintenance-free type; addition of water will not be required during normal service life. The battery cover and vent system will be designed to prevent electrolyte loss during service and to keep the top of the battery free from electrolyte.

3.9.2.1 Battery compartment. The batteries will be enclosed in a weatherproof enclosure, cover, or compartment and be readily accessible.

3.9.3 Battery charger or conditioner. The vehicle will have a DC taper type battery charger or an automatic battery conditioner, or voltage monitoring system, providing a minimum 12 amp output. The charger/conditioner will be permanently mounted on the vehicle in a properly ventilated, accessible location. The charger/conditioner will be powered from the electrical shoreline receptacle (see 3.10.1). A charging indicator will be installed next to the receptacle. When a battery conditioner is provided, the conditioner will monitor the battery state of charge and, as necessary, automatically charge or maintain the batteries without gassing, depleting fluid level, overheating, or overcharging. A slave receptacle will be provided at the rear or on either side of the vehicle cab. Battery jump studs may be installed on the exterior of the battery box in lieu of a slave receptacle.

3.9.4 Electromagnetic interference. The vehicle electrical system will be in accordance with SAE J551-2 for electromagnetic interference.

3.9.5 Work lighting.

3.9.5.1 Cab interior lights. Cab interior light levels will be sufficient for reading maps or manuals. At least one red and one white cab interior dome light will be provided.

3.9.5.2 Compartment lights. White lighting sufficient to provide an average minimum illumination of 1.0 footcandle will be provided in each compartment greater than 4.0 cubic feet and having an opening greater than 144 square inches. Where a shelf is provided, this illumination will be provided both above and below the shelf. All compartments will be provided with weatherproof lights that are switched to automatically illuminate when compartment doors are opened and the vehicle master switch is in the 'on' position. Light switches will be of the magnetic (non-mechanical) type.

3.9.5.3 Ladder, step, walkway, and area lights. Non-glare white or amber lighting will be provided at ladders and access steps where personnel work or climb during night operations. In addition, ground lighting will be provided. Ground lights will be activated when the parking brake is set in accordance with AC 150/5220-10, Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles. These area lights will be controlled with three-way switches on the cab instrument panel and near the light sources. The switch located in the cab will be a

master switch and must be turned on before auxiliary switches near the light sources are operational.

3.9.5.4 Spot/Floodlights. Two spot/floodlights will be attached at the end of the primary turret or at the end of the HRET assembly. The lights will illuminate the area covered by the turret. Both lights will be controlled from switches in the cab. LED lights will be used.

3.9.5.5 Flood Lights. Two fixed floodlights will be provided. One light will be mounted on the left and right sides of the vehicle. 250W LED lights will be used. Both lights will be controlled from switches in the cab and will be powered by the auxiliary generator.

3.9.5.6 Scene Lights. A total of six high mounted floodlights will be provided to illuminate the work areas around the vehicle. Two lights will be mounted on the front and two will be mounted on each side of the vehicle. The lights will be powered by the vehicle alternator driven system or auxiliary generator, and the lights in the front will be controlled from switches in the cab. LED lights will be used.

3.9.6 Audible warning devices.

3.9.6.1 Siren. The vehicle will be equipped with an electronic siren system. The amplifier unit will include volume control and selection of "Radio," "PA," "Manual," "Yelp," "Wail," and "Hi-Lo" (European) modes, and a magnetic noise canceling microphone. The amplifier, microphone, and controls will be within reach of the driver and the turret operator. Siren activating foot switches will be located in front of the driver and the turret operator. The siren speaker will be rated at 100 watts minimum and will be located in a guarded position as low and as far forward on the vehicle as practical.

3.9.6.2 Horn. Dual forward facing air horns will be installed in protected locations near the front of the vehicle. Air horn activating foot switches will be located in front of the driver and the turret operator.

3.9.7 Emergency warning lights. All emergency warning lights must meet the requirements of AC 150/5210-5. Where applicable, LED lights will be used as the primary light type. Lighting units will be installed on the top front, sides, and rear of the vehicle to provide 360° visibility. A switch will be provided on the instrument panel to control all of the top, side, front and rear emergency warning lights. A switch will also be provided on the instrument panel to disable all lower emergency warning lights when desired. All lighting systems will meet NFPA 414 emergency lighting criteria.

3.9.7.1 Emergency warning light color. All emergency warning lights will meet the requirements of AC 150/5210-5.

3.9.7.2 Headlight flashing system. A high beam, alternating/flashing, headlight system will be provided. The headlight flasher will be separately switched from the warning light panel.

3.9.8 Radio circuit. The vehicle will have three separate 30 amp circuits with breakers and connections provided in a space adjacent to the driver and turret operator for installation of radios and other communications equipment after the vehicle has been delivered. To facilitate the installation of the communications equipment the manufacturer will provide three antennas pre-installed on top of the cab. ***Radios are an airport responsibility and not part of this specification.***

3.9.9 Power receptacles.

3.9.9.1 Primary power receptacles. The vehicle will have two duplex 15-amp 110-volt power receptacles, one installed adjacent to the cab door on each side of the vehicle. Each duplex receptacle will include one straight blade and one twist-lock connection. These outlets will be powered by the generator.

3.9.9.2 Auxiliary power receptacles. The vehicle will have 2-12-volt auxiliary power receptacles mounted adjacent to the driver and crew member positions, preferably in the instrument panel.

3.9.9.3 Cable reel. The vehicle will be equipped with an electrical cable reel, located within a compartment. The reel will be equipped with 200 feet of 20 amp, 600 volt, 90°C insulated electrical cable. The electrical cable will be equipped with a rubber ball stop to prevent cable pull through during rewinding operations. A four-way roller guide will be provided on the cable reel to prevent chafing of cable insulation. The cable reel will have an electric rewind motor with provisions for manual rewind in the event of motor failure; the manual rewind handle will be securely stored near the cable reel. A portable weatherproof duplex outlet box, with built-in circuit breakers and twist-lock receptacles, will be provided for on the cable end. The cable reel will be powered by the auxiliary generator.

3.9.10 Auxiliary generator. A minimum 10 kilowatt (kW) (continuous rating), 120/240-volt, 60 hertz, diesel, hydraulic, or split shaft Power Takeoff (PTO)-driven generator will be provided.

3.10 Line voltage electrical system.

3.10.1 Electrical shoreline connection. The battery charger/conditioner will be powered from a covered, polarized, insulated, labeled, recessed (flush mounted), male, 110 volt AC auto-eject receptacle. The connection will be located on the exterior of the vehicle at the rear or on either side of the cab. A weatherproof charge meter will be installed next to the receptacle. A 15 amp rated, 110-120-volt, AC straight blade (non twist-lock) connector will be provided.

3.11 Air systems.

3.11.1 Air hose reel. An air hose reel will be provided in an enclosed compartment on the vehicle. The hose reel will be equipped with 200 feet of 3/8-inch I.D. hoseline. A 3/8 inch National Pipe Taper (NPT) fitting and female style quick disconnect will be connected to the end of the hoseline. A four-way roller guide will be provided for the hose reel to prevent hose chafing and kinking. The hoseline will be equipped with a rubber ball stop to prevent hose pull through on roller guides during rewinding operations. The hose reel will have an electric rewind motor and provisions for manual rewind in the event of motor failure; the manual rewind handle will be securely stored near the hose reel. A pressure protected air supply from the chassis air system will be connected to the hose reel. The air supply lines will be routed with minimum bends and located or guarded from damage from the carried equipment.

3.12 Quality of Workmanship. The vehicle, including all parts and accessories, will be fabricated in a thoroughly workmanlike manner. Particular attention will be given to freedom from blemishes, burrs, defects, and sharp edges; accuracy of dimensions, radii of fillets, and marking of parts and assemblies; thoroughness of welding, brazing, soldering, riveting, and painting; alignment of parts; tightness of fasteners; et cetera. The vehicle will be thoroughly cleaned of all foreign matter.

4. REGULATORY REQUIREMENTS.

4.1 Recoverable Materials. The contractor is encouraged to use recovered materials to the maximum extent practicable, in accordance with Title 48: Federal Acquisition Regulations System, Part 2823—Environment, Conservation, Occupational Safety, and Drug-free Workplace, Subpart 2823.4 Use of Recovered Material, 403 Policy and 404 Procedures.

4.2 Green Procurement Program. Green Procurement Program (GPP) is a mandatory federal acquisition program that focuses on the purchase and use of environmentally preferable products and services. GPP requirements apply to all acquisitions using appropriated funds, including services and new requirements. FAR 23.404(b) applies and states the GPP requires 100% of EPA designated product purchase that are included in the Comprehensive Procurement Guidelines list that contains recovered materials, unless the item cannot be acquired:

- a. competitively within a reasonable timeframe;
- b. meet appropriate performance standards, or
- c. at a reasonable price.

The prime contractor is responsible for ensuring that all subcontractors comply with this requirement. Information on the GPP can be found at:

http://www.dot.gov/ost/m60/DOT_policy_letters/apl8_04.pdf or FAR 23.404(b):
http://www.acquisition.gov/far/current/html/Subpart%2023_4.html.

5. PRODUCT CONFORMANCE PROVISIONS.

5.1 Classification of inspections. The inspection requirements specified herein are classified as follows:

- a. Performance inspection (see 5.2).
- b. Conformance inspection (see 5.3).

5.2 Performance inspection. The vehicle will be subjected to the examinations and tests described in 5.6.3.1 through 5.6.3.5 (if applicable). The contractor will provide or arrange for all test equipment, personnel, schedule, and facilities.

5.3 Conformance inspection. The vehicle will be subjected to the examinations and tests described in 5.6.3.1 through 5.6.3.5 (if applicable). The contractor will provide or arrange for all test equipment, personnel, and facilities.

5.4 Product conformance. The products provided will meet the performance characteristics of this PS, conform to the producer's own drawings, specifications, standards, and quality assurance practices, and be the same product offered for sale in the commercial marketplace. The purchaser reserves the right to require proof of such conformance.

5.5 Technical proposal. The offeror/contractor will provide an itemized technical proposal that describes how the proposed model complies with each characteristic of this PS; a paragraph by paragraph response to the characteristics section of this PS will be provided. The offeror/contractor will provide two copies of their commercial descriptive catalogs with their offer as supporting reference to the itemized technical proposal. The offeror/contractor will identify all modifications made to their commercial model in order to comply with the requirements herein. The vehicle furnished will comply with the "commercial item" definition of FAR 2.101 as of the date of award. The purchaser reserves the right to require the offeror/contractor to prove that their product complies with the referenced commerciality requirements and each conformance/performance characteristics of this PS.

5.6 Inspection requirements.

5.6.1 General inspection requirements. Apparatus used in conjunction with the inspections specified herein will be laboratory precision type, calibrated at proper intervals to ensure laboratory accuracy.

5.6.2 Test rejection criteria. Throughout all tests specified herein, the vehicle will be closely observed for the following conditions, which will be cause for rejection:

- a. Failure to conform to design or performance requirements specified herein or in the contractor's technical proposal.
- b. Any spillage or leakage of any liquid, including fuel, coolant, lubricant, or hydraulic fluid, under any condition, except as allowed herein.
- c. Structural failure of any component, including permanent deformation, or evidence of impending failure.
- d. Evidence of excessive wear.
- e. Interference between the vehicle components or between the vehicle, the ground, and all required obstacles, with the exception of normal contact by the tires.
- f. Misalignment of components.

- g. Evidence of undesirable roadability characteristics, including instability in handling during cornering, braking, and while traversing all required terrain.
- h. Conditions that present a safety hazard to personnel during operation, servicing, or maintenance.
- i. Overheating of the engine, transmission, or any other vehicle component.
- j. Evidence of corrosion.
- k. Failure of the fire fighting system and sub-systems.

5.6.3 Detailed inspection requirements.

5.6.3.1 Examination of product. All component manufacturers' certifications, as well as the prototype and production/operational vehicle testing outlined in Table 1, will be examined to verify compliance with the requirements herein. Attention will be given to materials, workmanship, dimensions, surface finishes, protective coatings and sealants and their application, welding, fastening, and markings. Proper operation of vehicle functions will be verified as defined by NFPA 414, Acceptance Criteria chapter. A copy of the vehicle manufacturer's certifications will be provided with each vehicle in accordance with NFPA 414. The airport may accept a manufacturer or third party certification for any/all prototype and production/operational vehicle testing performed prior to delivery which proves that the vehicle meets the performance parameters of NFPA 414.

Table 1. Vehicle Test Data

<i>NFPA 414 paragraph</i>	<i>Test</i>
Production Vehicle Operational Tests (NFPA 414 - Section 6.4)	
(6.4.1)	Vehicle Testing, Side Slope
(6.4.2)	Weight / Weight Distribution
(6.4.3)	Acceleration. NOTE: <i>With the modification that the instrumentation must be a GPS-based electronic data collection system.</i>
(6.4.4)	Top Speed
(6.4.5)	Brake Operational Test
(6.4.6)	Air System / Air Compressor Test
(6.4.7)	Agent Discharge Pumping Test
(6.4.8)	Dual Pumping System Test (As Applicable)
(6.4.9)	Pump and Maneuver Test
(6.4.10)	Hydrostatic Pressure Test
(6.4.11)	Foam Concentration Test
(6.4.12)	Primary Turret Flow Rate Test
(6.4.13)	Piercing/Penetration Nozzle Testing (As Applicable)
Prototype Vehicle Tests (NFPA 414 – Section 6.3)	
(6.3.1)	Rated Water and Foam Tank Capacity Test
(6.3.2)	Cornering Stability. NOTE: <i>With the modification that the evasive maneuver / double-lane change test must be conducted at 35 mph (56 kph).</i>
(6.3.3)	Vehicle Dimensions

<i>NFPA 414 paragraph</i>	<i>Test</i>
(6.3.4)	Driver Vision Measurement
(6.3.5)	Pump and Roll on a 40 Percent Grade
(6.3.6)	Electrical Charging System
(6.3.7)	Radio Suppression
(6.3.8)	Gradability Test
(6.3.9)	Body and Chassis Flexibility Test
(6.3.10)	Service/Emergency Brake Test
(6.3.11)	Service/Emergency Brake Grade Holding Test
(6.3.12)	Steering Control Test
(6.3.13)	Vehicle Clearance Circle Test
(6.3.14)	Agent Pump(s)/Tank Vent Discharge Test
(6.3.15)	Water Tank Fill and Overflow Test
(6.3.16)	Flushing System Test
(6.3.17)	Primary Turret Flow Rate Test
(6.3.18)	Primary Turret Pattern Test
(6.3.19)	Primary Turret Control Force Measurement
(6.3.20)	Primary Turret Articulation Test
(6.3.21)	Handline Nozzle Flow Rate Test
(6.3.22)	Handline Nozzle Pattern Test
(6.3.23)	Ground Sweep/Bumper Turret Flow Rate Test
(6.3.24)	Ground Sweep/Bumper Turret Pattern Control Test
(6.3.25)	Undertruck Nozzle Test
(6.3.26)	Foam Concentration/Foam Quality Test
(6.3.27)	Warning Siren Test
(6.3.28)	Propellant Gas
(6.3.29)	Pressure Regulation
(6.3.30)	AFFF Premix Piping and Valves
(6.3.31)	Pressurized Agent Purging and Venting
(6.3.32)	Complementary Agent Handline Flow Rate and Range
(6.3.33)	Dry Chemical Turret Flow Rate and Range
(6.3.34)	Cab Interior Noise Test

6. PACKAGING.

6.1 Preservation, packing, and marking will be as specified in the Procurement Specification, contract or delivery order.

6.2 The vehicle must be delivered with full operational quantities of lubricants, brake and hydraulic fluids, and cooling system fluid all of which must be suitable for use in the temperature range expected at the airport.

6.3 The vehicle must be delivered with one complete load of firefighting agents and propellants. One complete load is defined as all of the agents and propellants necessary for the vehicle to be fully operational. One load would include, at a minimum: one fill of a foam tank;

one fill of a dry chemical tank (if applicable); one fill of a halogenated tank (if applicable); one spare nitrogen cylinder for a dry chemical system (if applicable); and one spare argon cylinder for a halogenated system (if applicable). Agents and propellants for required testing or training are not included. For the initial training period, water should be used in place of other extinguishing agents. The manufacturer may pre-ship agents and propellants to a receiving airport to reduce overall procurement costs.

6.4. The vehicle manufacturer must provide initial adjustments to the vehicle for operational readiness and mount any ancillary appliances purchased through the vehicle manufacturer as part of the vehicle.

7. TRAINING.

7.1 Upon delivery of the vehicle to the airport, the manufacturer must, at no additional cost, provide the services of a qualified technician for five consecutive days (or up to eight days for an high reach extendable turret) for training. This is considered sufficient time for the purchaser to adjust shift work schedules to get maximum employee attendance to training sessions at some point during the training period. During this time sufficient repetitive learning opportunities must be provided by the manufacturer to allow various shifts to complete the training requirements.

7.2 The technician must provide thorough instruction in the use, operation, maintenance and testing of the vehicle. This setup must include operator training for the primary operators, which will give them sufficient knowledge to train other personnel in the functional use of all fire fighting and vehicle operating systems. Prior to leaving the vehicle, the technician should review the maintenance instructions with the purchaser's personnel to acquaint them with maintenance procedures as well as how to obtain support service for the vehicle.

7.3 Training must include written operating instructions, electronic training aids (videos/power point), or other graphics that depict the step-by-step operation of the vehicle. Written instructions must include materials that can be used to train subsequent new operators.

8. REFERENCED DOCUMENTS.

8.1 Source of documents.

8.1.1 The CFR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402.

Title 14, Code of Federal Regulations (CFR), Part 139, Certification of Airports (14 CFR Part 139)

Section 139.315 Aircraft Rescue and Firefighting: Index Determination.

Section 139.317 Aircraft Rescue and Firefighting: Equipment and Agents.

Section 139.319 Aircraft Rescue and Firefighting: Operational Requirements.

Title 49; Code of Federal Regulations (CFR), Part 393: Parts and Accessories Necessary for Safe Operation: Subpart C—Brakes.

Title 49; Code of Federal Regulations (CFR), Part 571, Motor Carrier Vehicle Safety Standards, Part 209, Standard No. 209; Seat Belt Assemblies.

8.1.2 SAE documents may be obtained from SAE, Inc., 400 Commonwealth Drive, Warrendale PA 15096.

8.1.3 National Fire Protection Association (NFPA): NFPA documents may be obtained from NFPA, Batterymarch Park, Quincy MA 02269-9101.

NFPA 412, Standard for Evaluating Aircraft Rescue and Fire-Fighting Foam Equipment (2009 Edition)

NFPA 414, Standard for Aircraft Rescue and Fire Fighting Vehicles (2007 Edition)

NFPA 1901, Standard for Automotive Fire Apparatus (2009 Edition)

8.1.4 Federal Aviation Administration (FAA): FAA ACs may be obtained from the FAA website: http://www.faa.gov/regulations_policies/advisory_circulars/

AC 150/5220-10, Guide Specification for Aircraft Rescue and Fire Fighting (ARFF) Vehicles

AC 150/5210-5, Painting, Marking, and Lighting of Vehicles Used on an Airport

FAA Orders, Specifications, and Drawings may be obtained from: Federal Aviation Administration, ATO-W CM-NAS Documentation, Control Center, 800 Independence Avenue, SW, Washington, DC 20591. Telephone: (202) 548-5256, FAX: (202) 548-5501 and website: http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/techops/atc_facilities/cm/cm_documentation/



Print Class 5 Specification

APPENDIX A. PREVIOUS FAA ADDITIONS, EXEMPTIONS, OR AMENDMENTS TO NFPA 414

NOTE: *This Appendix is being provided for reference purposes only. Additional input has been incorporated into the interactive specifications listed in Chapters 1-3 of this AC. Therefore, the output from Chapter 3 will be the only approved document used for federal vehicle procurement purposes.*

NOTE: *The numbering system listed in this section directly corresponds to chapters in the NFPA 414 2007 edition. To properly use this document, first refer to NFPA 414 for the base requirements then refer to this advisory circular for any additions, exceptions or amendments (see NFPA 414 Chapter Three, below, for definitions).*

A.1. NFPA 414 Chapter One: Administration

For the purposes of this AC, the term "Manufacturer" is defined as the manufacturer, distributor, lessor, or supplier of ARFF vehicle equipment.

A.1.1 ADDITION: 1.1

All remanufactured ARFF vehicles must meet the standards of this AC. Remanufactured ARFF vehicles must not exceed 75% of the cost of new manufactured vehicles of the same class with comparable options. Remanufacturing costs that exceed 75% of a new vehicle are not considered best value engineering for federal funding.

A.1.2 ADDITION: 1.3.4

Vehicles must be painted and marked in keeping with the standards of AC 150/5210-5, Painting, Marking, and Lighting of Vehicles Used on an Airport.

A.2. NFPA 414 Chapter Three: Definitions**A.2.1 ADDITION:**

Specific terms that apply to this AC are listed below:

- **ADDITION:** A new item has been added to the standard in the reference document.
- **EXCEPTION:** A restriction has been imposed on the standard in the reference document.
- **AMENDMENT:** Subject matter has been rewritten to modify part or all of the original text of the reference document.

Vehicle Classes:

- Performance requirements for classes 1, 2 and 3 vehicles follow the NFPA 414 Performance requirements for ≥ 100 and ≤ 528 gallons.
- Performance requirements for class 4 vehicles follow the NFPA 414 Performance requirements for ≥ 528 and ≤ 1585 gallons.
- Performance requirements for Class 5 vehicles follow the NFPA 414 Performance requirements for ≥ 1585 gallons.

Table A-1. Usable Capabilities

Class of Vehicle	Water or Water/AFFF Solution		Dry Chemical or Clean Agent *	
	Gallons (U.S.)	Liters	Pounds	Kilograms
1	100	454	500 / 450 / 460	225 / 204 / 209
2	300	1,136	500 / 450 / 460	225 / 204 / 209
3	500	1,900	500 / 450 / 460	225 / 204 / 209
4	1,500	5,685	See 14 CFR Part 139, Para 139.317	
5	3,000 to 4,500 in 500 gallon increments	11,360 to 17,035 in 1,900 liter increments	See 14 CFR Part 139, Para 139.317	

*500 lbs of Sodium- or 450 lbs Potassium-based (i.e. Purple K Powder), or 460 lbs Halogenated agent.

A.3. NFPA 414 Chapter Four: Aircraft Rescue and Fire-Fighting Vehicles

14 CFR 139.317 requires at least one vehicle to be equipped with dry chemical or approved clean agent regardless of airport index. Approved equivalent complementary agent systems referenced in NFPA 414 Chapter 3 are acceptable optional additions to the basic vehicle when dictated by local operational needs.

NOTE: *Commercially manufactured chassis used to manufacture Class 1, 2 and 3 vehicles must comply with Federal Motor Vehicle Safety Standards (FMVSS). If NFPA requirements are more demanding, they take precedence.*

A.3.1 ADDITION: 4

All moving parts requiring routine lubrication must have a means of providing for such lubrication. There must be no pressure lubrication fittings where their normal use would damage grease seals or other parts.

A.3.2 AMENDMENT: 4.2.1.2.1 (2).and (3)

Class 1, 2 and 3 vehicles are exempt from this requirement.

A.3.3 ADDITION: 4.2.2.3

Class 4 and 5 vehicles must be provided with mirrors that effectively cover the blind spot area in front of the vehicle that is not within the operator's direct view.

A.3.4 ADDITION: 4.3

The engine and transmission must operate efficiently and without detrimental effect to any drive train components when lubricated with standard, commercially available lubricants in keeping with the recommendations of the engine and transmission manufacturers.

The engine oil and transmission fluid filters must be of the full-flow type with a replaceable spin-on element for Class 4 and 5 vehicles.

A.3.5 AMENDMENT: 4.3.3.5.1

For class 1, 2 and 3 vehicles (refer to Table I-1) sufficient capacity must be provided for a minimum of 100 miles (160 km) of highway travel at 60 MPH (97 kph) and one hour of pumping at the full rated discharge if the foam/water agent discharge system is engine driven.

A.3.6 AMENDMENT: Table 4.1.1 (a) and (b)

Evasive Maneuver test must be conducted at 35 MPH (56 KPH).

A.3.7 AMENDMENT: Table 4.1.1 (c), (d), and 3b (a).

For class 1, 2 and 3 vehicles nozzle flow rate must be \geq 60 GPM.

A.3.8 ADDITION: 4.6

An off-road, high-mobility suspension system resulting in no more than 0.5 G_{rms} acceleration at the driver's seat of the vehicle when traversing an 8-inch (20 cm) diameter half round at 35 mph (56 kph) must be provided.

The suspension design by which the manufacturer meets the suspension performance requirements is at the manufacturer's discretion.

A.3.9 AMENDMENT: 4.11.5.1(3)

Crew seats with individual retractable 3 point restraint seatbelts.

A.3.10 AMENDMENT: 4.11.5.1 (11).

Not applicable to Class 1, 2, and 3 vehicles.

A.3.11 ADDITION: 4.8

Pintle hooks on Class 1, 2, and 3 vehicles not to exceed maximum towing capacity of the vehicle.

The towing devices may be allowed to intrude into the 30-degree approach angle in order to provide ease of connection if needed.

A.3.12 ADDITION: 4.12.3

All compartments will be provided with weatherproof lights that are switched to light automatically when compartment doors are opened and the vehicle master switch is in the 'on' position.

A.3.13 AMENDMENT: 4.12.6

The height between steps must be less than 20 inches (51 cm). For Class 1, 2, and 3 vehicles the lower steps must be no more than 19 inches (49 cm) from the ground. The lowermost steps may extend below the angle of approach or departure or ground clearance limits if they are designed to swing clear. The tread of the bottom steps must be at least 8 inches (20 cm) in width and succeeding steps at least 16 inches (40 cm) in width. The full width of all steps must have at least 6 inches (15 cm) of unobstructed toe room or depth when measured from, and perpendicular to, the front edge of the weight-bearing surface of the step.

A.3.14 EXCEPTION: 4.12.8

Vehicles must be painted and marked in keeping with the standards of AC 150/5210-5.

A.3.15 EXCEPTION: 4.12.8.1

Vehicles must be painted and marked in keeping with the standards of AC 150/5210-5.

A.3.16 ADDITION: 4.13**Table A 2. Foam/Dry Chemical/Clean Agent Simultaneous Delivery System**

NOTE: *The agent delivery rates in this table are allowed by the FAA as a result of independent third party demonstrations of fire suppression capability of a Foam/Dry Chemical/Clean Agent Simultaneous Delivery System.*

Hand Line and Turret Performance Criteria	Class 1, 2, & 3 Vehicles	Class 4 & 5 Vehicles - This firefighting system has not been evaluated for Class 4 & 5 Vehicles
Foam Performance	See NFPA 414, 2007 Ed. Table 4.1.1	N/A
Dry Chemical Performance		
• Discharge rate	5.0 to 8.0 lbs/sec (3.1 to 4.9 liters/sec)	N/A
• Discharge rate with foam	5.0 to 8.0 lbs/sec (3.1 to 4.9 liters/sec)	N/A
• Discharge rate with foam and clean agent	5.0 to 6.0 lbs/sec (3.1 to 3.7 liters/sec)	N/A
• Hand Line Range	≥ 90 ft (27.5 M)	N/A
• Hose Length	See NFPA 414, 2007 Ed. Table 4.1.1	N/A
• Turret Range	≥ 100 ft (30.5 M)	N/A
• Turret Width	See NFPA 414, 2007 Ed. Table 4.1.1	N/A
Clean Agent Performance		
• Discharge with foam	≥ 1 lb/sec (0.61 liters/sec)	N/A
• Discharge with foam and dry chemical	≥ 1/3 lb/sec (0.2 liters/sec)	N/A
• Independent Clean Agent Range	≥ 40 ft (12.2 M)	N/A
• Inside Hose Diameter	≥ ¼ inch (0.64 cm)	N/A
• Hose Length	See NFPA 414, 2007 Ed. Table 4.1.1	N/A

NOTE: *The agent delivery rates in this table are allowed as a result of independent third party demonstrations of fire suppression capability of a Foam/Dry Chemical/Clean Agent simultaneous delivery. (Evaluation of Quad-Agent Small Fire Fighting System DOT\FAA\AR-TN06\13) Otherwise, the standards of Tables 4.1.1(c) and 4.1.1(d) apply.*

A.3.17 COMPRESSED AIR FOAM SYSTEM (CAFS):

Compressed Air Foam System (CAFS) allows for improved fire suppression capability. CAFS must have expansion ratios of 6:1 to 10:1 with 8:1 being optimal. CAFS is currently restricted to Class 1, 2 and 3 vehicles as it has not been demonstrated on primary or auxiliary turrets of Class 4 and 5 vehicles.

Any hand line that is dedicated specifically for CAFS must have a smooth bore nozzle. Hand line discharge rates of 30 GPM and primary and auxiliary turret discharge rates of 60 GPM are permissible.

A.3.18 AMENDMENT: 4.15.2.2:

Manhole covers are not required for class 1, 2 and 3 vehicles.

A.3.19 AMENDMENT 4.16.1.6:

For Class 1, 2 and 3 vehicles, the foam tank must be equipped with at least one top fill opening of not less than 5 in (127 mm) internal diameter.

A.3.20 EXCEPTION: 4.18.6 (1).

The only sections of Chapter 20 of NFPA 1901, 2003 Edition that are applicable are the following:

- 20.14.2
- 20.14.3
- 20.19 through 20.19.6
- 20.20 Structure
- 20.23 Instruction Plates and Signs

A.3.21 AMENDMENT: 4.18.6.6

If a high reach extendable turret is specified by the purchaser, a skin penetrating nozzle must be provided. The penetrating nozzle must be movable to allow for proper alignment of the penetrator to the aircraft fuselage for piercing operations. It must be capable of the minimum water/flow rate and pattern requirements of Tables 4.1.1(c) and 4.1.1(d) (not applicable to class 1, 2 and 3 vehicles).

A.3.22 EXCEPTION: 4.24.4

Vehicles must be lighted at a minimum in keeping with the standards of AC 150/5210-5. Refer to Appendix B for maximum allowable lighting.

A.4. NFPA 414 Chapter Five: Interior Access Vehicle

A.4.1 ADDITION: Chapter 5

An Interior Access Vehicle (IAV) must meet at least the agent requirements of CFR Part 139.317(a).

A.4.2 AMENDMENT: 5.1.3

The vehicle must provide access to sill heights of between 7 feet (2.3 meters) and up to at least the lower sills of the largest aircraft operating at the airport. This sill height is sufficiently low enough to allow access to the lowest sill height aircraft currently in operation (e.g. DC9) that does not have its own integral stairs.

A.4.3 ADDITION: 5.4

While on a 15 degree tilt the platform and stairs must be able to be leveled as a unit to within 5 degrees of horizontal for operational use.

A.4.4 AMENDMENT: 5.4.2

The vehicle must pass a 15 degree tilt test with stairs fully extended without stabilizing equipment. However, the platform is not required to be fully loaded to the design weight capacity. Side wheel chocks may be used to prevent the vehicle from sliding on the table surface, but their height is not to exceed 5% of the tire diameter.

NOTE: *The FAA will allow side wheel chocks to prevent an IAV from sliding on a tilt table surface with a low coefficient of friction. The FAA has accomplished some IAV testing using a tilt table that followed standards from ANSI/ITSDF B56.6-2005 which allows chocking not to exceed 5% of the vehicle's tire diameter.*

A.4.5 ADDITION: 5.5

The vehicle must meet the requirements of the Society of Automotive Engineers (SAE) ARP1247, Aircraft Ground Support Equipment – General Requirements, Rev. D, Paragraphs:

3.13.1.9 – Equipment Stability: The stability of the unit will be stated in terms of Stability Ratio. The Stability Ratio is defined as the ratio of the restoring moment to the overturning movement. If the ratio is greater than one, the unit is increasingly stable as the ratio increases. If the ratio is less than one, the unit will overturn.

3.13.1.9.1 – The unit in operating condition, in its most unstable configuration, will have a minimum stability ratio of at least 1.2 when exposed to a wind load or jet blast of 19.4 lb/ft² (928.9 Pa) (80 mph) (128.7 km/h) applied from the direction most likely to cause instability. It must also withstand a wind load of 24.4 lb/ft² (1168.3 Pa) (90 mph) (144.8 km/h) without overturning.

Wind or jet blast unit forces will be based on:

$$F=0.00252 V^2 C_D$$

Where: C_D is the drag coefficient, assumed to be 1.20, $0.00252V^2$ is stagnation pressure of dry air at 68°F (20°C) and standard atmospheric pressure with velocity of V miles per hour, and F is the unit force in pounds per square foot.

3.13.1.9.3 – If stabilizers, outriggers, and/or spring lockouts are used or combination of same or similar device to gain stability, calculations or test data will be developed both with and without the devices.

A.5. NFPA 414 Chapter Six: Acceptance Criteria

A.5.1 ADDITION: 6.1

The vehicle must be delivered with full operational quantities of lubricants, brake and hydraulic fluids, and cooling system fluid all of which must be suitable for use in the temperature range expected at the airport.

The vehicle must be provided with all fire fighting agents and propellants to make it operational upon delivery.

The vehicle manufacturer must provide initial adjustments to the vehicle for operational readiness and mount any ancillary appliances purchased through the vehicle manufacturer as part of the vehicle.

A.5.2 AMENDMENT: 6.1.5

Upon delivery of the vehicle to the airport, the manufacturer must, at no additional cost, provide the services of a qualified technician for up to a maximum of five consecutive days (or up to eight days for an high reach extendable turret) for training. This is considered sufficient time for the purchaser to adjust shift work schedules in order to obtain maximum employee attendance at training sessions at some point during the training period. During this time sufficient repetitive learning opportunities must be provided by the manufacturer to allow various shifts to complete the training requirements. The technician must provide thorough instruction in the use, operation, maintenance and testing of the vehicle. This setup must include operator training for the primary operators, which will give them sufficient knowledge to train other personnel in the functional use of all fire fighting and vehicle operating systems. Prior to leaving the vehicle, the technician should review the maintenance instructions with the purchaser's personnel to acquaint them with maintenance procedures as well as how to obtain support service for the vehicle. Training must include written operating instructions that depict the step-by-step operation of the vehicle. Written instructions must include materials that can be used to train subsequent new operators.

A.5.3 AMENDMENT: 6.3.2.6

Evasive maneuver test must be conducted at 35 MPH (56 KPH).

A.5.4 ADDITION: 6.4.3.2

GPS Based electronic data collection system.

A.6. NFPA 414 Annex A**A.6.1 AMENDMENT: A4.1.5**

All options listed in A4.1.5 are approved options as amended below.

- 4c. Auxiliary generator capacity as specified by the manufacturer.
- 5e. Spare tire(s) - Only one spare tire on a rim not mounted on the vehicle is automatically approved
- 8m. Video Recorder for color and or Forward Looking Infrared (FLIR) camera(s) – Digital Format Only
- 8o. Pre-connect handlines and nozzles.
- 8y. Remote mounted instrument and control panel (structural panel) includes:
 - (1) Engine instruments and pump controls, including a tachometer, an oil pressure gauge, a temperature gauge, and a pressure control; pump shift; manual metering control; two compound suction-pressure gauges; water tank isolation valve; and panel lights.
 - (2) Either one or two 2-1/2 inch discharge valves must be provided. Each discharge valve must be provided with pressure gauge and bleeder. One manual metering control will be provided.
 - (3) One 2-1/2 inch and one large diameter suction inlet connection with bleeder must be provided, if specified.
 - (4) A priming pump and reservoir must be provided if specified.

The following items from the options list A4.1.5 require justification to obtain FAA approval:

- 2a. Added payload capacity (GVWR) to carry special equipment where the purchaser identifies added equipment.
- 2c. Audio-visual devices that meet or exceed the field of vision provided by wide-angled mirrors.
- 3a. Engine that operates at necessary performance above 2000 ft (609.6 M) elevation.
- 3b. Radiator shutters.
- 3c. Engine coolant filter.

- 5f. Bead locks on all tires and rims.
- 7d. FLIR camera and in-cab monitor located in the cab.
- 8d. Foam tank drain valve(s), drain line and hose that facilitate draining the tank into specified container(s) positioned on the ground within 10 ft. (3 M) in either horizontal direction of the foam tank drainage system.
- 8g. Turret controls located in the cab or on the roof platform

The following items from the options list A4.1.5 are not allowed as user-specified options, but may be used by manufacturers to meet the stability requirements of this specification:

- 5a. Reduced under-axle and underbody clearances to provide a more stable performance on pavement when the vehicle suspension is designed to permit instantaneous adjustment to the required height for off-pavement travel.
- 5b. Tag or other non-powered axle(s) to assist weight distribution and/or stability requirements.
- 5c. Vehicle stability systems.
- 5d. Passive or active suspension components to increase the stability of the vehicle while decreasing the rollover threshold.

The following items from the options list A4.1.5 are not approved options:

- 2b. Increased overall width of the vehicle to facilitate increased performance and maneuverability with no concern for movement on public highway(s).
- 3f. Automatic drain(s) for the diesel fuel-water separator.
- 3g. Auxiliary fuel tank(s) commensurate with the need to meet local requirements.
- 5g. Run flat devices in all tires and wheels mounted on the vehicle.
- 8a. Water tank design that allows access with each baffled compartment of the tank for internal and external inspection/service.
- 8i. Turret(s) control(s) accessible both to the driver and the crew member.

A.6.2 AMENDMENT: A4.2.1.

Options 1-17 are not available for ARFF vehicle specification under this advisory circular.

A.7. NFPA 414 Annex E

A.7.1 EXCEPTION: Annex E.

AC 150/5210-19, Drivers Enhanced Vision System, supersedes NFPA 414, Standard for Aircraft Rescue and Firefighting Vehicles (2007 Edition), Annex E.

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APPENDIX B. ARFF VEHICLE TRAINING EQUIPMENT

There are two types of vehicle training devices available to ARFF personnel: the Aircraft Skin Penetration Device and the Computer Based Simulation Training System. Only one of the devices is needed per airport. The Authority requires the Aircraft Skin Penetration Device.

The use of an aircraft skin penetration tool has been shown to be an effective firefighting device. The skill involved with the effective employment of this device increases dramatically with practical application. The training devices must meet the following requirements:

B.1. Aircraft Skin Penetration Training Device

A rigid frame structure with a cross-sectional, curved aluminum panel(s) may be specified to meet the following requirements:

- a. Aluminum panels must be comparable in thickness, hardness and curvature of the predominant type aircraft for the specific airport. Panels may be movable or replaceable to allow adjustments for different aircraft types.
- b. Panels must be located at a representative height to the predominant aircraft in use at the specific airport.
- c. Panels must be mounted on a structure (portable or stationary) that remains stable during training exercises.

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EXHIBIT B: REQUESTED ADDITONS BASED ON LOCAL REQUIREMENTS

The following are requested additions to the specifications listed in Exhibit A: Advisory Circular 150/5220-10E

3.1.4.2 Temperature Range

The apparatus will be capable of satisfactory storage and operation in Tropical environments. The air conditioning systems must be enhanced with additional cab cooling capabilities to meet the local needs for extended standby or emergency operations in the high heat / high humidity environment encountered year round in Southwest Florida.

3.3.11.2 Compressed air shoreline or vehicle-mounted auxiliary air compressor.

Pre-installed Auto-Ejecting shoreline air port for the air system and an on-board air compressor.

3.4.3 Instruments and Controls

An externally mounted Pre-start or Remote Start control system that allows for the driver/operator to activate the start-up sequence for the apparatus and starting of the apparatus all from the exterior of the truck.

All dash lights and displays are dimmable for night time operations.

3.4.5 Forward-Looking Infrared (FLIR)

FLIR camera capable of providing pinpoint temperature readings.

3.6.3 Foam System

An On-board Input-based foam testing system to be included on this apparatus. This system must allow for the testing of the proportioning system without the need to discharge AFFF to the environment.

3.6.3 and 3.8 Foam System & Halotron I system per Exhibit A: Advisory Circular 150/5220-10E, Appendix A.5.1 Addition: 6.1

This apparatus delivered with a complete amount of AFFF and Haltron I so that the truck can be tested, fully refilled, and put into active service immediately upon arrival.

3.6.7 Pre-connected Handlines

In addition to the pre-connected handline, an additional 1" x 150' reeled hoseline rated for 95gpm @ 100psi is to be located in a compartment on the opposite side of the apparatus from the Halogenated agent reeled hoseline.

3.6.5.1 HRET Trainer Aircraft Skin Penetration Training Device per Exhibit A: Advisory Circular 150/5220-10E, Appendix B.1

Aircraft Skin Penetration Training Device to be included in the purchase in order to satisfy FAA Advisory Circular 150/5210-23 which requires that all personnel operating an HRET-equipped truck be field trained.

3.8 Halotron I system

An inline test valve for the Haltron System such that the system can be tested with a very limited waste discharge of agent.

3.9.7 Emergency Warning Lights

All emergency lights and warning devices necessary to meet the requirements of NFPA 1901 for operation on public roadways are equipped on the apparatus. Additionally, emergency warning lights must not shine into the cab in such a way as to affect the driver's or rider's vision during daytime or nighttime operation

3.10.8 Radio Circuit

In addition to the "circuit for radios" provided in Exhibit A: Advisory Circular 150/5220-10E, Three (3) radios must be included and installed as follows:

- Two (2) Multiband (700MHz-, 800MHz-, and VHF-capable) APCO P25-compatible (per Lee County, Florida, Public Safety Radio standards) radio transceivers
- One (1) Avionic (Aircraft) Band transceiver with Dual-Watch capability.

The primary multiband transceiver and the Avionic transceiver must be connected to a wired headset system with headsets for each seating position and be capable of receiving transmissions from both radios simultaneously and transmission from each radio as required by the driver/operator. These radios must also be capable of transmitting and receiving radio traffic without the use of the headsets, using speakers and microphones. The radio circuits must also have proper isolation to reject any electrical interference from items such as the generator, LED lighting, and emergency warning systems.

Items included in multiple Exhibit A: Advisory Circular 150/5220-10E sections or not included in any section

Lubrication

A continuous central lubrication system instead of individual fittings.

Fire Fighting Systems

Undertruck nozzles with a rate of at least 15 GPM, and a minimum of four (4) nozzles.

Water Tank Fills

Four (4) direct water tank fills: Two (2) each on the left side of the tank and Two (2) each on the right side of the tank to accommodate a 5" Storz and 2½" intakes at the same time

Agent Piping Systems

All piping for agents (water/foam) must be stainless steel when possible in order to extend the life of the apparatus and reduce corrosion in a high humidity environment.

Body

Exterior Water & Foam level lights. These lights must be separated by a distance of at least six feet, where practical, and indicate remaining agent capacity as Full, ¾, ½, or ¼.

Body

Lockable Compartment Doors with three (3) sets of keys for the purposes of safety & security when the apparatus is out of service or off of the airport.

**Exterior Graphics Package per Exhibit A: Advisory Circular 150/5220-10E,
Appendix A.1.2 Addition: 1.3.4**

Location	Display Graphic
Roof – 24” Facing Front of Vehicle	909
Front Bumper	909
Driver Front Fender	1” Red Stripe
	8” White Stripe
	1” Red Stripe
Driver Front Door	ARFF Logo -11”
	1” Red Stripe
	8” White Stripe
	1” Red Stripe
Left Panel Tank	Southwest Florida International Airport (centered above doors)
	LCPA Logo centered (by the non-cab section) on the top area of the doors
	1” Red Stripe
	8” White Stripe with Italic (7”) FIRE RESCUE in red
	1” Red Stripe
Driver Rear Quarter Panel	909 (on right rear roll up door - 30" high)
	1” Red Stripe
	8” White Stripe
	1” Red Stripe
Rear	909 (on left upper side above license plate - 30" high)
	1” Red Stripe
	8” White Stripe
	1” Red Stripe
Passenger Rear Quarter Panel	909 (on right rear roll up door - 30" high)
	1” Red Stripe
	8” White Stripe
	1” Red Stripe

Right Tank Panel	Southwest Florida International Airport (reverse italic centered above doors)
	LCPA Logo centered (by the non-cab section) on the top area of the doors
	1" Red Stripe
	8" White Stripe with reverse italic (7") FIRE RESCUE in red
Passenger Front Door	ARFF Logo - 11"
	1" Red Stripe
	8" White Stripe
	1" Red Stripe
Passenger Front Fender	1" Red Stripe
	8" White Stripe
	1" Red Stripe

Window Tinting

Front Windshield

- % Visible Light Transmittance = 71%
- % Visible Light Reflectance (Exterior) = 8%
- % Ultraviolet Light Blocked = >99%
- % Total Solar Energy Rejected (TSER) = 40%

Side Windows (All)

- % Visible Light Transmittance = 38%
- % Visible Light Reflectance (Exterior) = 6%
- % Ultraviolet Light Blocked = >99%
- % Total Solar Energy Rejected (TSER) = 53%

Ladder

A 24 foot extendable removable Ladder capable of being mounted to the exterior of the apparatus for aircraft access.

Shelving

Adjustable shelving in all storage compartments.

Documentation

Four (4) physical copies and one (1) electronic copy of all manuals listed in Exhibit A: Advisory Circular 150/5220-10E, Section 3.1.1.



Direct Dial: 239-590-4558
Fax: 239-590-4539

August 10, 2021

RICHARD W.M. WESCH
PORT AUTHORITY ATTORNEY

BOARD OF
PORT COMMISSIONERS

BRIAN HAMMAN

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Frank MANN

CECIL L PENDERGRASS

RAY SANDELLI

Mr. Christian Kleebauer-CEO
Rosebauer Minnesota, LLC
5240 257th Street
Wyoming, MN 55092

Subject: NOTICE OF INTENT TO AWARD

Dear Mr. Kleebauer,

The Lee County Port Authority intends to recommend the award of RFB 21-46CDE, Purchase and Delivery of Aircraft Rescue and Fire Fighting Crash Truck for Lee County Port Authority to your company.

Upon the approval of the Board of Port Commissioners, Lee County Port Authority will enter into an agreement in accordance with the requirements of the referenced solicitation. Notification of this decision to award the referenced bid will be posted on IONWAVE. For more information, please visit www.flylcpa.ionwave.net.

A representative from the Purchasing Office will be in contact with you by email shortly to obtain additional information that may be required in order to finalize the agreement.

Thank you for your participation and interest in doing business with the Lee County Port Authority.

Sincerely,

DocuSigned by:

FA068A661276A45
Melissa M. Wendel, CPPO, NIGP-CPP
Procurement Manager

CC:

Mark Trank, Assistant Port Authority Attorney
Tracy Young, Fire Chief, Aircraft Rescue and Firefighting
David Childress III, ARFF Programs Manager
Megan Bowman, Procurement Agent



SPECIFICATION PREPARED FOR

Southwest Florida Int'l Airport

**NEW PANTHER 6x6 3000 GALLON
(11,356 LITER)
WITH HIGH REACH EXTENDABLE TURRET**

**ROSENBAUER
AIRPORT - RESCUE and FIRE FIGHTING
RAPID INTERVENTION VEHICLE
"CLASS 5" 6x6 W/ HRET**



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DEFINITIONS

The intent of these specifications is to describe the requirements necessary to supply a well-designed, self-contained, properly engineered diesel-powered Aircraft Rescue and Fire Fighting (ARFF) vehicle. The unit shall be new and unused.

The ARFF vehicle shall consist of a crew cab on a 6x6, custom chassis with single tires. It is to be all-wheel drive, single engine diesel-powered, with an automatic transmission.

The fire-fighting package shall include a water tank with a minimum capacity of 3000 gallons (11,356 liters) and a liquid foam agent concentrate tank with a working capacity sufficient for two tank loads of water at the maximum tolerance specified in NFPA 414.

The unit shall contain all component parts necessary for a water/foam proportioning system capable of expelling agent through a cab-controlled High Reach Extendable Turret (HRET), a bumper turret, gated discharge(s), twin agent hand line and pre-connected handline(s) as detailed hereafter in these specifications.

The vehicle shall also be equipped with an auxiliary agent system. The system shall be operable from the cab and exterior of the vehicle.

Discharges shall meet all current applicable discharge rate requirements of FAA Advisory Circular #150-5220-10E and NFPA 414 standards in effect at time of bid.

This apparatus shall be equipped with various other components as called for in these specifications.

During the construction of the vehicle, Rosenbauer reserves the right to make running production changes if the changes enhance the safety, operation and maintenance of the vehicle.

USB STORAGE

For ease of service the chassis shall come with an on-board USB flash drive. The flash drive shall have a minimum of 8 GB of storage capacity; and shall be located in the dash panel.

The following items shall be stored on the Flash Drive.

- As built wiring diagrams
- Chassis, body and HRET manuals when applicable.

The USB shall be accessible through a USB-A to USB-B cable.



FAMILIARIZATION GUIDE

Rosenbauer shall provide a customized printed hard copy familiarization guide for each fire personnel specific to the purchaser's vehicle which will include the following:

- Safety Information
- Vehicle Information
- Familiarization Vehicle External Components
- Driver Cab Controls – Overview
- Transmission
- Center Console Controls
- Pump system
- Auxiliary agent System
- Electrical System
- Preparations for use
- Starting Procedures
- Pre-Start Checks, Jacking, Trailing, & Roll Up Door Maintenance

WATER FOAM AGENT APPLICATORS

Per the FAA circular and NFPA 414

Each water/foam agent handline shall be capable of delivering a finished foam solution that meets the applicable rate, range, and pattern standards of Table 4, Performance Parameters 3 or 4.

Each water/foam agent handline shall deliver finished foam of a quality that meets the applicable standards of Table 4.

Each water/foam agent turret shall be capable of delivering a finished foam solution that meets the applicable rate, range, and pattern standards of Table 4, Performance Parameters 5 or 6, as applicable.

Each water/foam agent turret shall deliver a finished foam of a quality that meets the applicable standards of Table 4.

All water/foam applicator performance requirements are based on the assumption that foam used to perform the tests is an approved foam concentrate, e.g., will pass the military AFFF foam specification 50 ft² fire test and the burn back resistance test.

QUALITY ASSURANCE

Rosenbauer will fully comply with all items regarding quality assurance, test and technical service and training as defined in NFPA 414.



DELIVERY

The completed vehicle shall be delivered by flatbed truck to a location designated by the customer. Upon delivery Rosenbauer shall supply a qualified technician to inspect the vehicle, perform any final adjustments to the vehicle and make the vehicle ready for service.

VEHICLE FAMILIARIZATION

Rosenbauer shall provide a qualified technician after delivery and acceptance by the purchaser acquaint fire department personnel in the proper use and application of the ARFF unit as necessary to accommodate staffing.

Familiarization for fire fighters shall consist of the following:

- Classroom instruction on proper operation and maintenance of this ARFF vehicle to include visual inspection of vehicle, indicating various controls and instruction in proper operation of the unit.
- Actual operation/driving of the ARFF vehicle to include instructions in proper driving of the vehicle, foam and water discharge, pump operation, and familiarity with all necessary firefighting functions.
- Familiarization will include the use of computer aided programs, manuals and hands-on familiarization.
- Rosenbauer will provide familiarization for department maintenance personnel on the vehicles major systems and lubrication points.

BASE VEHICLE WARRANTY

Rosenbauer shall provide a one (1) year bumper to bumper warranty on the vehicle.

A warranty statement shall be provided that will include the following as a minimum:

- Manufacturer's obligations
- Duration of warranty period for vehicle, engine, transmission, and water/foam tanks
- Warranty procedure
- Disclaimers

Rosenbauer shall support the vehicle with factory trained technicians to perform warranty repairs during the warranty period.



ENGINE WARRANTY

The engine shall be covered by a two (2) year warranty. Warranty details shall be provided with the bid submission.

TRANSMISSION WARRANTY

The transmission shall be covered by a two (2) year warranty. Warranty details shall be provided with the bid submission.

WATER PUMP WARRANTY

The water pump shall be covered by a five (5) year warranty. Warranty details shall be provided with the bid submission.

WATER TANK WARRANTY

The water tank shall be covered by a lifetime warranty. Warranty details shall be provided with the bid submission.

PAINT WARRANTY

A five (5) year paint warranty shall be provided for all portions of the apparatus that have been painted. Warranty details shall be provided with the bid submission.

VEHICLE TESTING

The vehicle shall be tested in accordance with NFPA 414 and FAA 5220-10E.

A final report of the vehicle testing, and certification shall be provided to the end user for their records.

Unit shall comply with all requirements of FAA Advisory Circular #150-5220-10E and NFPA 414 standards in effect at time of bid.

PAINTING

The vehicle will be painted/striped in accordance with the FAA AC and shall include the following:

A coating of epoxy sealer (PPG DP 48/50/90) shall be applied with a minimum of 1.0 mil dry film build. The epoxy sealer allows for maximum adhesion to the body material. A color coating of PPG Urethane Paint Direct Gloss with PPG Catalyst shall be applied with a minimum of 2.0 mil dry film build. The catalyst provides a base level UV barrier to prevent fading and chalking.



PAINTING

The vehicle will be painted/striped in accordance with the FAA AC and shall include the following:

Cab: per the FAA specification (lime yellow)

Frame: black

Superstructure: FAA specification (lime yellow)

Front angle of approach: Combination black and FAA (lime yellow)

A coating of epoxy sealer (PPG F4921) shall be applied with a minimum of 1.0 mil dry film build. The epoxy sealer allows for maximum adhesion to the body material. A color coating of PPG Urethane Paint Direct Gloss with PPG Catalyst shall be applied with a minimum of 2.0 mil dry film build. The catalyst provides a base level UV barrier to prevent fading and chalking.

UNDERCOATING

The wheel well areas of the cab and body shall be sprayed with an automotive undercoating.

WHEEL PAINT

The chassis wheels shall be painted black in color.

LETTERING

Single color reflective lettering and numerals shall be applied per customer direction and sized appropriately to the vehicle design as space allows. Lettering details shall be discussed and designed during pre-construction.

The customer shall provide to the manufacturer the approved airport/ARFF department emblem for installation by the manufacturer's graphic specialists. The manufacturer shall advise the customer when the graphics should be delivered to them for installation so there is no delay in prepping the apparatus for final inspection/delivery.

ROOF NUMBER

An unpainted aluminum plate shall be provided on the roof of the cab for placement of the vehicle identification number and shall also serve as the mount for radio antenna's if required. The identification number shall be reflective, and color shall be determined by the Customer.

====No Painted Rear Number Plate====



STRIPING

An 8” reflective stripe shall be applied to the perimeter of the vehicle to meet the requirements as outlined in the FAA Advisory Circular #150-5220-10E. Striping information shall be discussed and designed during pre-construction.

BOOM EXTENSION MARKINGS

The inside fly of the boom shall be provided with numbers visible to the operator indicating extension distance.

PERFORMANCE

The design objective for the vehicle and the fire extinguishing system shall be performance in accordance with FAA Advisory Circular.

Rosenbauer shall provide a data plate.

This data plate shall be installed in the cab of the vehicle and visible to the operator.

Acceleration from 0-50 mph
(0-80 kph): Less than 35 seconds

Top speed: Approximately 70 mph (112 kph)

Braking from 60-0 mph
(96-0 kph): Less than 235 feet (71.5 meters)

Side Slope Stability: 30° (58% grade)

Pump & Roll Discharge
On Slope: 21.8° (40%)

Steering Max Cramp Stability: 12° (20%)

Dynamic Balance: 22 mph (min)

Pump performance: Up to 2100 GPM (8000 LPM)



ENVIRONMENTAL

The vehicle shall be capable of withstanding the following conditions without detrimental effect to subsequent operation of the vehicle or any of the fire extinguishing systems:

- a) Dust particles, as encountered in desert areas.
- b) The corrosive effects of salt fog.
- c) Material decay from fungus and mildew.
- d) Relative humidity up to 100 percent, as well as wind driven snow, sleet, rain, and vehicle self-splashing of water.

GRADABILITY

The vehicle shall be able to ascend a 50-percent grade in its fully loaded condition.

OPERATIONAL RANGE

The fully loaded vehicle shall be able to:

Operate continuously for 30 miles (48 km) at speeds up to 55 mph (88 kph). The test route shall include agricultural lands, paved and unpaved roads, and grades typical of those encountered at the airport.

Negotiate pooled water to a depth of 2 inches (50 mm) for a distance of at least 150 feet (45 meters) at a speed of at least 40 mph (65 kph) without engine flooding/stalling, loss of directional control, loss of braking, or electrical system(s) shorting.

Operate for 10 minutes on dry, paved roadway at not more than 2 mph (3.2 kph) at an engine speed that does not result in rough, irregular operation.

Ascend a dry, paved incline having an 8- percent grade for a distance of 0.25 mile (0.4 km) at a speed of not less than 20 mph (32 kph).

Negotiate (J Turn) a 90°, 150-foot (45 meter) radius turn at 30 mph (48 kph) on smooth, dry, level pavement without loss of directional control or stability.

TOP SPEED

The vehicle shall be able to consistently reach a top speed of 70 mph (112 kph) and maintain a constant speed of at least 60 mph (96 kph) on typical paved, level (grades of less than 1 percent) highway surfaces for a minimum distance of 20 miles (32 km) without showing overheat symptoms in any portion of the cooling system or power train.



FLEXIBILITY

The design objective for the vehicle frame, suspension, and mounting of major components shall be to provide the capability for diagonally opposite wheel motion up to 14 inches (355 mm) above the ground without raising the remaining wheels from the ground or causing interference or parts failure. The vehicle is designed in such a way as to exceed this requirement. The upper motion of the vehicle suspension is such that it will travel a minimum of 7 inches (177 millimeters) in an upward fashion and exceed the lower travel limit of seven inches in such a way to maintain tractability and prevent “hanging” of the suspension when conditions exceed this parameter.

MAINTAINABILITY

The vehicle design shall be such that it:

Uses the fewest number of different parts consistent with the specified performance.

Permits maintenance with commercially available, general purpose mechanic tools and equipment. Rosenbauer shall provide and document in the maintenance manual introduction any special or nonstandard tools required, and any unique test equipment required to perform operator/owner maintenance and service.

Limits the number of tools and the variety of spare parts required for maintenance by such design practices as reducing the variety of bolt sizes, light bulb sizes, wire gauges, tubing, and pipe sizes as consistent with safety and performance requirements.

The vehicle shall utilize disconnect plugs, receptacles, junction boxes, bus bars, multiple-line connectors in the electrical systems, and readily detachable fittings in hydraulic and pneumatic systems, as applicable. All disconnect points shall be clearly labeled. All hydraulic and pneumatic lines and electrical wires shall be color, function, or number coded.

As applicable pilots, guides, slides, carriages, or other features shall be utilized if it adds to the ease of removal and installation or attachment of components.

The vehicle shall use a fastener system that is easily disassembled and reassembled for all cabinets and bodywork that must be removed for access for maintenance and removal of components for repair or replacement. Uses fasteners not limited to brackets, nuts, bolts, washers, screws, and rivets of stainless steel or other materials resistant to corrosion.

Locates drains, filler plugs, grease fittings, hydraulic line-bleeders, and checkpoints so that they are readily accessible and do not require special tools for proper servicing.

The vehicle shall be designed and constructed so that the installation of each major subsystem or critical part can only be in its proper operating position.



Provides accessible connections, where needed, to attach troubleshooting, analytical, and diagnostic equipment to appropriate vehicle subsystems.

Operates with standard commercial lubricants. Grease and oil seals shall be of a design and located to provide accessibility for inspection, servicing, and replacement. Access to lubrication points shall be provided by means of an easy opening door or hinged panel. Lubrication fittings shall be located in accessible, protected positions. Parts or assemblies that are not readily accessible for direct lubrication or are likely to be overlooked because of inaccessibility shall have extended fittings. A safety chain shall attach filler caps to lubrication fill points where practical.

LUBRICATION

The engine and transmission shall operate efficiently and without detrimental effect to any drive train components when lubricated with standard, commercially available lubricants in accordance with the recommendations of the engine and transmission manufacturers.

The engine oil and transmission fluid filters shall be of the full-flow type with a replaceable spin-on element.

All moving parts requiring lubrication shall have a means of providing for such lubrication. There shall be no pressure lubrication fittings where their normal use would damage grease seals or other parts.

The vehicle shall be serviced prior to delivery with lubricants, brake and hydraulic fluids, and a cooling system fluid suitable for use in the temperature range expected at the airport.

COMPONENT PROTECTION

All oil, hydraulic, air, water, foam concentrate, and electrical system conduits, tubing, and hoses shall be located in protected positions. They shall be secured to the frame or body structure and, except where a through-frame connector is necessary, shall be fitted with protective looms or grommets at each point where these items pass through panels or structural members.

All radiator grills, louvers, lamps, tie rods, drive shafts, piping, and other vulnerable components shall be protected by component location or by guards adequate to prevent damage from brush, stones, logs, or any other debris likely to be encountered by the vehicle during off road performance.



BALANCE AND CLEARANCES

The weight shall be distributed as equally as practical over the axles and tires of the fully laden vehicle. The difference in tire load between tires on any axle shall not exceed 5 percent of the average tire load for that axle. The difference in load between axles shall not exceed 10 percent of the load on the heaviest axle. The front axle shall not be the most heavily loaded axle.

The fully loaded vehicle shall be able to meet the side slope stability performance requirements specified in FAA Advisory Circular.

Approach angle:	30°
Departure angle:	30°
Inter axle clearance angle:	12°
Side slope stability:	30°
Under body clearance:	25" (635 mm)
Under axle clearance:	Axles: 14.75" (374 mm)

DIMENSIONS

The overall height, length, and width of the vehicle shall be the smallest dimensions consistent with the rated payload for its class and the operational performance requirements of the vehicle.

Overall length:	approx. 39' 4" (12,000 mm)
Overall width:	approx. 11' (3,352 mm) including mirrors
Overall height:	approx. 12' 1" (3,683 mm) to top of guard rails
Wheel base:	18' 3" (5,600 mm)

LOAD RATING

The functional load rating of the frame shall equal or exceed the actual gross vehicle weight (GVW). The GVW includes complete chassis; cab with attachments, accessories, and equipment; the body with rated agent payload, including a full complement of crew, fuel, lubricant, coolant, firefighter protective clothing, equipment, and breathing apparatus in appropriate numbers; and fire-fighting hand tools and appliances.

Weight ratings:	
Front axle:	28,500 lbs / 12,927 kg
1 st Rear axle:	28,500 lbs / 12,927 kg
2 nd Rear axle:	28,500 lbs / 12,927 kg
Total:	85,500 lbs / 38,781 kg



EMISSIONS RATING

The engine shall be Tier IV final emission ratio certified.

ENGINE

A high-performance diesel engine with electronically controlled fuel injection system and modern, fuel efficient 4-cycle design as follows:

Make/Model: VOLVO D16

High performance diesel engine with electronically controlled fuel injection system

No. of cylinders: 6, in line

Aspiration: turbocharger, charge air cooling, 4-cycle

Engine output: 700 HP (515 kW) at 1,800 rpm

Maximum torque: 2,323 ft. lbs. (3,150 Nm) at 1,200 rpm

Displacement: 16.1 liters

ENGINE BRAKE

A Volvo engine brake shall be provided for assisted braking. The engine braking system shall be activated by releasing the throttle pedal.

The brake system can be deactivated by pressing an ON/OFF switch located on the dashboard.

COOLING SYSTEM

Type: Water-ethylene/glycol cooling

Performance: System shall have the capability to stabilize the vehicles engine temperature within the limits specified by the engine manufacturer under all operational conditions encountered by the vehicle.

Construction: Heavy duty type, bolted construction modular design that includes the transmission oil cooler, remote mounted, semitransparent reservoir tank for easy fill access, reservoir is visible from an access door at rear side of vehicle. Drain cocks shall be provided on the low points of the system to aid in draining the system completely if needed.



Air flow: Thermostatically clutch controlled pusher fan shall provide fresh air to the radiator by means of an air duct. Air is ingested through the top of the vehicle and exhausted out the rear. Hot air from the engine compartment is never directed across the radiator cooling fins and provides excellent engine temperature control.

Hoses and Connectors: All hoses associated with the coolant system (radiator and heater) shall be made of a silicone material and shall be secured with constant torque clamps.

COOLING SYSTEM

The cooling system shall be rated for -40 to 110F (-40 to 43C)

FUEL SYSTEM

Primary Fuel Filter/

Water separator: One (1) thermostatically controlled heated fuel/water separator.

Secondary Fuel Filter: One (1) filter element

====No Fuel Re-Prime Required====

FUEL TANK

Capacity: One (1) nominal 80-gallon fuel tank shall be supplied. The fuel tank supplied meets the performance requirements as outlined in NFPA 414 which states that the vehicle fuel tank shall have sufficient capacity to provide for a minimum of 30 miles of highway travel at 55 mph average plus 2 hours of pumping at the full-rated discharge. Additional fuel capacity shall be provided for a minimum of four (4) hours of operation of each accessory item (such as a generator or fuel-fired heater(s) that uses the common fuel tank as a source.

Location: Mid-ship on right side.



EXHAUST SYSTEM

The vehicle will be supplied with a stainless-steel pipe and muffler. The muffler shall be mounted on top of engine compartment. The exhaust is terminated in such a way as to minimize noise on the interior and exterior of the vehicle.

EXHAUST TERMINATION

The exhaust shall terminate vertically that directs all exhaust away from the vehicle.

TRANSMISSION

A single source transmission system, consisting of power divider, torque converter, and six-speed automatic power shift transmission with integrated transfer case shall be provided to ensure perfect matching of these components. A single supplier allows easy service support for these major drive train components.

The main transmission is remotely mounted in the center of the chassis, low in the frame rails. The low mounting position while still providing excellent ground clearance allows for a lower center of gravity, thus increasing the dynamic stability of the vehicle.

The input section of the transmission consists of two gear-driven clutch shafts. Each shaft contains two (2) 7" (177 mm) clutch packs of the orifice type. When the clutch is engaged, output is from gear and drive rings on the clutch shafts and through gears on the compound shaft. This shaft contains two 9" (228 mm) clutch packs equipped with individual feedback dump valves. The front 9" (228 mm) clutch is an LD type clutch and the rear is an S type clutch. A spline-connected output gear on the 9" (228 mm) clutch shaft is meshed with the input gear on the inter-axle differential. The differential includes two independent output shafts connected through the inter-axle differential. The differential has a clutch that when applied, locks up the differential providing a solid drive through the differential to the outputs.

Manufacturer: Twin Disc 6-speed fully automatic powershift transmission.

SUSPENSION

The axles and suspension system shall be such that the total un-sprung weight of the vehicle will not be greater than 20 percent of the in-service GVW.

Double-acting hydraulic shock absorbers shall be provided for all axles or bogies, as applicable.

Energy absorbing stops shall be installed so as to prevent damage to axles, drive shafts, the engine oil pan, or any other portions of the chassis from bottoming.



The vehicle utilizes a high-performance coil spring system (HPCSS). A variable rate coil spring in combination with a 4 link V-rod / trailing rod system w/ anti-roll bar over live rigid axle provides superior off/on road capabilities that comply with all current regulations including FAA, NFPA and ICAO. The system incorporates a high-performance variable rate coil spring and dual acting shock absorber mounted on each wheel. The live rigid axle provides strength and is tied to a torsion bar and V-link rod allowing the rigid axle to move in an independent manner. Each wheel will be supplied with an energy absorbing bump stops to prevent the suspension from contacting the chassis. The system allows for a minimum of 16 inches of wheel travel with lower wheel travel exceeding all applicable standards to prevent the wheel from “carrying” in asymmetrical travel conditions. Wheel travel and tractability exceed all applicable standards. The HPCSS system shall provide ride capabilities that reduce road shock, protect the body and mounted components from damage and provide the operator positive feedback to during extreme vehicle maneuvering.

The progressive coil spring over live rigid axle system has by design a lower roll moment than a half shaft driven independent suspension system and provides positive control in on road / high speed cornering situations and provides a safe controllable ride in off road conditions. The suspension system combines the best features of independent coil spring suspensions and rigid axle systems, allows for independent movement of the wheels, and has a minimum of moving parts, extreme strength and weight carrying capacity.

Because of the arrangement of the 4-link suspension the vehicle rear tandems have a natural cramp built in the axle assembly allowing “trailing” of the rear axle behind the intermediate axle with a natural cramp of approximately 2 degrees. This allows for decrease tire wear and reduced turning clearance without the need for expensive and maintenance intensive “steering” axles.

The suspension system is fully tested and is NFPA/FAA/ICAO compliant and meets all current requirements for an Off-Road High Mobility Suspension System.

Front Suspension

Manufacturer: Rosenbauer Motors

Type: High Mobility On/Off Road Coil Spring Live Rigid Axle Suspension

Design: Variable rate coil spring suspension with heavy duty double acting shock absorbers, V-rod links, torsion bars and anti-roll stabilizer bar.

Rear Suspension

Manufacturer: Rosenbauer Motors

Type: High Mobility On/Off Road Coil Spring Live Rigid Axle Suspension

Design: Variable rate coil spring suspension with heavy duty double acting shock absorbers, live rigid axle, V-rod links, torsion bars and anti-roll stabilizer bar.



WHEELS AND TIRE ASSEMBLY

Single tires for optimal off-road performance are provided on all axles. The tires have high mobility non-directional tread. All tires are interchangeable without restrictions.

Front Wheels

Wheel type: Bolted steel wheel

Wheel size: 18.00 x 21

Tire type: High mobility tires

Tire size: 24R x 21

Wheels and tires are interchangeable with rear axle.

Rear Wheels

Wheel type: Bolted steel wheel

Wheel size: 18.00 x 21

Tire type: High mobility tires

Tire size: 24R x 21

Wheels and tires are interchangeable with front axle

TIRES

The tires provided shall be Michelin brand for optimal off-road performance on all axles.

SPARE WHEEL and TIRE ASSEMBLY

One (1) spare wheel and tire assembly interchangeable with front or rear axle shall be provided.

BEAD LOCKS

Each wheel will be supplied with a bead lock to allow for operation of the tire at low pressure without separation from the wheel assembly.

MUD FLAPS

Mud Flaps shall be installed behind each wheel well to reduce damage from stones, brush etc. being thrown off the tires.

BEAD LOCKS

Each wheel will be supplied with a bead lock to allow for operation of the tire at low pressure without separation from the wheel assembly.



TOW EYES & SHACKLES

Two tow eyes shall be provided at the front and at the rear of the frame with a shackle for each tow eye.

BRAKE SYSTEM

A pneumatically actuated brake system shall be provided that has been tested and certified. The system shall include an all-wheel, split-circuit, power-assisted service brake, a modulation capable emergency brake and parking brake.

The braking system meets or exceeds FAA, NFPA, ICAO and the Federal Motor Vehicle Standard (FMVSS) 121 requirements. An ABS braking system is provided as standard for improved safety. The brakes are directly mounted to hub and wheel. In case of a major drive shaft failure, the vehicle can still be stopped safely.

SERVICE BRAKES

Type: Dual circuit brake system w/ABS meeting FMVSS 121, NFPA 414 and FAA Advisory Circular 150-5220-10E. ABS system shall include a self-diagnostic system and warning indicator on the cab dash instrument cluster to advise the driver of operation or malfunction.

Actuation: Floor mounted treadle foot valve for service brake. Dash mounted push-pull valve for parking brake.

Compressor: Capacity 37 cfm direct drive engine mounted

Miscellaneous: Push-lock color coded nylon tube throughout routed along chassis frame rail; air tanks equipped with heated automatic drain valves; air compressor discharge line stainless/ Teflon; reservoir capacity approx. 80 l (4,950 in³); air dryer w/heated element (Bendix ADIP).

Rapid Buildup: A fast build up system is provided to permit release of spring brakes within 15 seconds of engine start up based on empty air tanks.

External Air Tank drains: Provisions for draining the air tanks from a centralized remote point on the vehicle shall be provided eliminating the need for a person to go under the vehicle. The drain points shall be labeled.



Performance: Exceeds FAA, NFPA, ICAO and FMVSS requirements
20 - 0 mph (32-0 kph) in less than 40 ft. (12 m) Requirement is 40 ft. (12 m)
40 - 0 mph (64-0 kph) in less than 160 ft. (48 m) Requirement is 160 ft. (48 m)
Holding Capacity: Min. 60% slope
Notes: The pneumatically operated firefighting functions are supplied from a separate dedicated, pressure protected accessory reservoir.

FRONT AND REAR BRAKES

Front Brakes

Type: Wedge-Type Drum Brakes

Rear Brakes

Type: Wedge-Type Drum Brakes

AXLES

The axles shall be rated and certified as being suited for the intended use. The axle manufacturer's approved rating shall not be raised to conform to the requirements of this specification.

Front and rear axles shall have adequate capacity to carry the fully loaded vehicle under all intended operating conditions. The maximum variation in axle tread shall not exceed 20 percent of the tire(s) sectional width at rated load.

Tractive power at each wheel shall be achieved by use of torque proportioning differentials or other suitable automatic devices that will ensure that each wheel of the vehicle is driven independently of the other wheels.

Front axles shall be equipped with steering drive ends designed to eliminate fluctuations in angular velocity of the wheels when cramped either left or right at all normal operating speeds.

An all-wheel drive axle system is provided. The well proven design is widely used in commercial and military applications. An extensive testing cycle applied to pre series vehicles ensures reliability and longevity in this specific ARFF application.



The usage of torque increasing planetary hub ends reduces the size of the differential housings and improves the ground clearance for extensive off-road operation.

Front Axle

Make: Kessler

Type: The front axle is of the front driving/steer type with suitable reduction gearing via planetary gears at the hubs. A driver operated differential lock is provided.

Front Brakes

Type: duplex wedge type drum brakes

1st Rear Axle:

Make: Kessler

Type: Double reduction with suitable reduction gearing via planetary gears at the hubs. Driver operated differential locks and an inter-axle lock on the first rear axle are provided.

Rear Brakes

Type: simplex wedge type drum brakes

Rear Axle:

Make: Kessler

Type: Double reduction with suitable reduction gearing via planetary gears at the hubs. Driver operated differential locks and an inter-axle lock on the first rear axle are provided.

Rear Brakes

Type: simplex wedge type drum brakes

PARKING BRAKE

Type: Spring apply, pneumatically activated release

Location: At rear axles, two (2) chambers per axle. Parking brake warning light indicator on cab dashboard.

Holding Capacity: Min. 30 % slope

====No Roll Stability Control (RSC)====



STEERING

The power assisted steering shall have sufficient capacity so no more than 15 pounds (6.8 kg) pull is necessary on the steering wheel rim to turn the vehicle wheels from lock to lock of the fully loaded vehicle when stationary.

The design of the steering mechanism shall permit manual steering to bring the fully loaded vehicle to a safe stop after power-assist failure.

The vehicle shall perform as follows when driven on a steering pad around a 100-foot (30 m) radius circle:

- (1) With increasing speed, the steering angle shall increase; over steer shall not be acceptable.
- (2) The vehicle shall remain on the prescribed path until achieving a speed at least equal to the standard specified in Table 2, Performance Parameter

The wall-to-wall turning diameter shall be no greater than three times the length of the vehicle.

A tilt/telescoping steering wheel/column shall be provided.

Ram assisted power steering system is provided.

Steering Column: Tilt-telescoping

Steering Wheel: 18" (457 mm) Four Spoke w/ integrated horn button.

STEERING POSITION

The steering column and wheel shall be mounted left center of the cab.

COACH WORK

The Rosenbauer Panorama Safety Cab certified per the latest regulations including NFPA 414, FAA Advisory circular 150-5229-10E as well as ICAO and using ECE R29-3 and was tested with a real crash test to ensure cab safety.



Parts shall be fabricated from materials that will provide the lightest weight consistent with the needs for strength, as well as heat and corrosion resistance. Safety of the crew shall be a primary consideration in coach work, especially the protection of occupants during a roll over.

A fully trimmed ROSENBAUER Panther ARFF two door cab providing forward left center driving position shall be provided. The cab is constructed of welded aluminum box sections with formed aluminum sheets. Large windows provide excellent all around and upward visibility through tinted safety glass and tempered side windows. Heavy duty light alloy extrusions provide front impact protection as well as a roll cage to protect the occupants.

A panorama-view windshield, in combination with full glass side walls as well as the compact dashboard, provide an excellent range of vision, including from the rear crew seats. The roof window offers a perfect view to the roof turret.

The windshield is made of laminated safety glass, side and roof windows are made of tempered safety glass.

The cab entrance is built with a low positioned outside step, integrated steps and wide opening doors that allow for safe access and offers more space for equipment in the cab with an additional compartment integrated in the step.

Access to the roof turret through a roof hatch is possible by using the rear wall mounted steps. Gas springs support the opening of the hatch and keep it in safe position even in windy conditions.

CAB DOORS

Large safety doors are provided on both sides. The doors open 90° to provide maximum safety for crew members entering and exiting with SCBA. In addition, a true staircase, not a ladder type entry shall be provided.

CAB DOOR ELECTRIC WINDOWS

The cab door sliding windows shall be electrically actuated. Window controls shall be mounted on the center dash and accessible for operation by both front crew members (driver and turret operator).

BUMPER

A heavy-duty bumper is provided to protect the lower cab section and provide an integrated mounting provision for the bumper turret.



ROOF ACCESS / EMERGENCY EXIT PROVISION

A marine quality roof hatch shall be provided for roof access and as an emergency exit provision should such an exit be required.

WINDSHIELD WIPERS

Dual wet arm wipers with jet washers are provided including a reservoir. The reservoir fill cap is easily visible and accessible.

AUTOMOTIVE WINDOW TINT

The front windshield and side windows of the cab shall be provided with standard automotive window tint.

WINDSHIELD DELUGE SYSTEM

A Windshield Deluge system shall be furnished and installed on the chassis cab. The windshield deluge system shall have four (4) nozzles mounted above the windshield and have a separate pump assembly with activation switch in the cab. Minimum pump output shall be three (3) gallons per minute (11 liters per minute). The windshield deluge system shall be plumbed to direct clear water onto the windshield. The system shall be provided with a screen to prevent debris from rendering any nozzles or the pump inoperable.

INSULATION AND WATERPROOFING

Insulation shall be fire and water resistant and of a type that will not pack or settle. Provision shall be made to allow the drainage of water from between the walls by gravity flow. The average heat loss shall not exceed 0.24 BTU/ft² (0.76 W/m²) per degree Fahrenheit per hour. All insulation that could be exposed to abrasion or damage from equipment storage or operator activities shall be provided with a protective covering. All insulation that will be located on the exterior of the vehicle shall be protected from damage or exposure by a permanent cover to be constructed to match the vehicle exterior.

All components shall be designed, installed and/or protected so that their normal function will not be impaired by heavy rains, road splash, formation of condensation, or the spillage of extinguishing agents from nozzles and fittings, recharging operations, or leaks in the piping system.



The vehicle shall incorporate the use of air conditioning and the system shall meet current automotive/truck and environmental protection standards for vehicle air conditioning. The air conditioning system shall not change the acceptable pass/fail criteria for any of the performance tests of the vehicle or the firefighting system.

INTERIOR CAB EQUIPMENT

A low floor and a wide door on each side of the cab to allow rapid entry and exit shall be provided. The ergonomically laid out instrument panel is equipped with a full set of instruments, weatherproof illuminated switches and a complete warning system with indicator lights and audible alarms. All substantial firefighting functions including the turret controls are within reach of driver and co-driver on a center console.

- Heavy duty non-slip flooring shall be provided in the forward portion of the cab.
- Instrument panel, with integral dash mounted controls.
- Heater/defroster; fresh air and re-circulating type, outlets spread evenly across the dash.
- One (1) grab handle at each cab door for entry assistance.
- Windshield shall be one-piece, high visibility and shatter-proof laminated safety glass.
- Roof viewing window.

SUN VISORS

Interior sunshades shall be installed on the upper portion of the cab windshield and roof window.

POWER POINT

One (1) dual USB 12-volt power point shall be provided and incorporated in the dash console.

POWER POINT

One (1) 12-volt power point shall be provided and incorporated in the dash console.

MAP LIGHTS

Two (2) Goose neck style map lights shall be provided and mounted one (1) each side of the cab dash.



MIRRORS

Large, heated, four-way power adjustable and remotely operated mirrors shall be mounted on the front of the cab, providing excellent visibility. Mirrors shall provide a minimum of 60 square inches (38,709 square mm) viewing and incorporate a wide-angle convex mirror. The mirror controls shall be located on the right side for ease of use by the driver.

CREW SPACE

All crew space shall be restricted to the interior of a fully enclosed cab with approved, 3-point restraints.

Where practicable, instruments shall be used in preference to warning lights. If warning lights are used, a means to readily test the condition of all warning light bulbs shall be provided.

Instruments and warning lights shall be displayed so that they will be useful, convenient, and visible to the driver.

The instrument panel(s) shall either be easily removable as units or hinged for back access. Quick disconnect fittings shall be used for all electrical connections to the instrument panel. All instruments, except liquid filled gauges, shall be illuminated. Labels for control and instruments shall be backlit or illuminated.

All rotating or reciprocating parts, all parts with operating temperatures above 120° F (49° C), or that are electrically energized or are of such a nature or so located as to be a hazard to the safety of operating and maintenance personnel during their normal duties, shall be insulated, enclosed, or guarded as appropriate for the specific hazard and its location.

All space that is occupied or from which work is performed during operations, servicing, and maintenance of the vehicles shall be free from hazardous protrusions, sharp edges, cracks, or other elements that might reasonably be expected to cause injury to personnel.

RIDE QUALITY

The vehicle shall be designed so that the ride quality permits the safe operation of the vehicle in on/off road conditions and in adverse terrain that may be encountered on the airfield. If the vehicle is used in an off-road environment the vehicle shall be capable of traveling at speeds up to 35 mph (56 kph) without causing injury to the operating personnel who are properly seat belted in the vehicle and without causing damage to the vehicle itself.



CONTROLS

All the controls necessary for the full operation of the vehicle and for activating the firefighting system shall be within reach of the driver.

Controls for the fire extinguishing system(s) shall also be within easy reach of a second crew station. All cab-mounted controls shall be identified by function and/or limitation with permanent backlit labels.

Firefighting equipment and controls located on the vehicle exterior shall be placed between 24 inches (609 mm) and 72 inches (1,828 mm) above the ground, catwalks, or deck plates, as applicable.

All controls located on the exterior of the vehicle shall be labeled with an illuminated permanent label identifying function and/or limitation.

SIREN/PUBLIC ADDRESS SYSTEM

A multi-tone, multi-volume emergency vehicle warning siren/public address device with speaker and microphone shall be installed. The device shall produce a minimum sound level of 95 dB(A) at 100 feet (30m) directly in front of the vehicle and 90 dB(A) at 100 feet (30m) and 45 degrees left and right of front center.

One (1) siren speaker shall be mounted on the front bumper or the turret mounting platform and shall be protected from firefighting agent dripping from the bumper turret and water splashed up by the tires.

SIREN SWITCHES

Siren activating foot switches shall be provided for the driver and turret operator.

BACK-UP ALARM

A “vehicle backing” warning device, audible up to 25 feet (7.6 m) behind the vehicle, shall be provided. Shifting the transmission into reverse shall activate the back-up alarm.

AIR HORN SYSTEM

Two (2) Air horns shall be provided and mounted to achieve optimum sound projection to the front of the vehicle.



AIR HORN SWITCHES

One (1) floor mounted foot switch shall be provided on each side floor of the cab for the driver and front passenger crew seat.

ANTENNA TAPS

The vehicle will be provided with three (3) separate 30 amp circuits with breakers and connections provided in a space adjacent to the driver and turret operator for the installation of Customer provided and installed radios and other communication equipment after the vehicle is delivered to the end user. To facilitate the installation of the communication equipment, three (3) antenna taps shall be provided and installed on top of the cab with cabling run to the center console for the Customer installed radios.

The vehicle shall be provided with radio interference protection in accordance with SAE J551/4, Test Limits and Methods of Measurement of Radio Disturbance Characteristics of Vehicles and Devices, Broadband and Narrowband, 150kHz to 1000MHz, or an equivalent radio interference suppression standard.

INSTRUMENTATION DISPLAY

The vehicle dash cluster instrumentation shall be standard psi.

INFORMATION

- Speedometer (electronic)
- Tachometer (electronic)
- Transmission mode (N / active gear / R)
- Odometer
- Transmission oil temperature
- Coolant temperature
- Dual air pressure (indication and warning)
- Differential locks activated
- Fuel level
- Ad-blue level
- Voltmeter
- Indicator left/right
- Lights (low beam / high beam, fog lights, rear fog lights)
- Engine brake
- Indicator speed
 - Indicator pressure
 - Indicator temperature



WARNINGS

- Engine oil pressure low
- Coolant temperature high
- Coolant level low
- Transmission oil temperature high
- Park brake engaged
- Fuel level low
- Exhaust system
- Engine check/stop
- ABS deactivated

Warning Sign that states “Occupants must be seated and wearing a seat belt when apparatus is in motion” will be provided in locations that are visible from each seated position in accordance with NFPA 414.

CONTROL PANEL FOR FIRE FIGHTING OPERATION

Control of the firefighting system is done via LCS 2.0 control display within a well-designed menu navigation. All necessary control elements appear as a button in the relevant submenu. A status-LED in combination with the information in the display shows active buttons.

The following buttons are always provided at the display:

- Optical alarm devices
- Acoustic alarm devices
- Pump operation
- Pump operation / manual operation
- Foam operation
- Scene lighting
- Warnings
- System information

Additional service screens in the display contain detailed information regarding engine, gearbox and superstructure.

Activation and deactivation of the fire pump (automatic mode) as well as engine speed adjustment is done via LCS-Digipot (display screen). Pressing the "Start"-button activates an automatic mode (Pump and Roll) with following functions:

- Activation of PTO of torque converter
- Increase engine speed
- Open water tank suction valve
- Engage priming pump (if specified)
- Engine speed is infinitely variable via turn switch.



INSTRUMENTATION DISPLAY

The pump panel digital instrumentation shall be standard psi.

HALOTRON AGENT CONTROL PANEL

Activation of propellant for the Halotron unit via safety switch in cab accessible by both the driver and passenger. One (1) pressure gauge will be mounted in the cab, displaying the vessel pressure of the Halotron system.

INTERIOR CABINETS

There shall be two (2) interior storage cabinets located one (1) on the floor of the back center portion of the cab and one (1) located under the interior access ladder, both compartments shall be provided with lift up doors with thumb latches.

AIR CONDITIONING

An air conditioning system shall be installed in the cab. The evaporator shall be integrally installed with the heater/defroster unit.

DRIVER'S SEAT

One (1) high back adjustable (fore, aft, up & down) driver's seat with hard back, covered in grey Dura-Wear material and integrated seat belt system shall be installed. The integrated seat belt shall be red in color to provide contrast.

TURRET OPERATOR'S SEAT

One (1) high back adjustable (fore, aft, up & down) turret operator's seat with integrated Load and Lock SCBA bracket, covered in grey Dura-Wear material and integrated seat belt system shall be installed. The integrated seat belt shall be red in color to provide contrast.

A removable insert to cover the SCBA unit when mounted in seat back shall be supplied.



LEFT SIDE CREW SEAT

One (1) high back adjustable fixed position fire-fighter flip up crew seat with integrated Load and Lock SCBA bracket, covered in grey Dura-Wear material and integrated seat belt system shall be installed to the left and slightly aft of the driver's position and shall egress directly out the left cab door. The integrated seat belt shall be red in color to provide contrast.

A removable insert to cover the SCBA unit when mounted in seat back shall be supplied.

RIGHT SIDE CREW SEAT

One (1) high back adjustable fixed position fire-fighter flip up crew seat with integrated Load and Lock SCBA bracket, covered in grey Dura-Wear material and integrated seat belt system shall be installed to the left and slightly aft of the driver's position and shall egress directly out the left cab door. The integrated seat belt shall be red in color to provide contrast.

A removable insert to cover the SCBA unit when mounted in seat back shall be supplied.

SCBA BRACKET ON REAR CAB WALL

One (1) NFPA 1901 compliant SCBA bracket mounted on the rear wall of the cab for driver's SCBA.

INFRARED CAMERA SYSTEM (FLIR)

A FLIR (forward looking infrared) Vehicle Vision System shall be installed to provide enhanced visibility for low light or smoky conditions. The camera shall be capable to operate in open ambient air temperatures from -40°C to 80°C.

The FLIR system shall be capable of operation as a driver's aid during low visibility driving conditions.

One (1) FLIR camera shall be mounted on the HRET monitor providing pan and tilt capabilities.

A 10.4" (264 mm) flip up LCD 1042x768 resolution flat screen monitor shall be provided for the FLIR camera. This monitor shall be used to display the FLIR camera images and/or color camera images as specified elsewhere in these specifications.

FLIP UP VIDEO MONITOR

A flip up monitor shall be provided on the driver's side of the cab dash for viewing of the FLIR image.



FLIP UP VIDEO MONITOR

A flip up monitor shall be provided on the officer's side of the cab dash for viewing of the FLIR image.

BACKUP CAMERA

A backup camera system shall be installed on the vehicle. System shall automatically turn on whenever the vehicle is placed in reverse and shall be able to be switched on manually if desired. The system shall have a dedicated monitor mounted on the cab dash in such a way as to be readily visible to the driver. The system shall be viewable through the LCS mounted in a position on the dash to be readily visible to the driver.

MONITORING AND DATA ACQUISITION SYSTEM (MADAS CONNECTED FLEET)

A Rosenbauer MADAS/Connected Fleet system shall be installed on the vehicle that will allow the monitoring of the following items as specified in the NFPA 414. Installed components from the DWD system must be integrated:

- vehicle speed
- vehicle heading
- lateral acceleration
- vertical acceleration
- longitudinal acceleration and deceleration
- engine RPM
- throttle Position
- steering Input
- vehicle braking input (pedal position and brake pressure)
- date, time, and location for all data collected

The GPS position of the truck shall be stored by the system in addition.

The data acquisition system shall be capable of storing the measurements and the time intervals, starting at least 120 seconds before and ending at least 15 seconds after any serious incident. The system shall be designed so that the data being recorded will not be lost or overwritten immediately after the incident due to the use of an emergency shut-off or a master electrical disconnect switch. System shall be "hot-wired" to the battery system and shall by-pass the normal electrical system. Appropriate software cables and instruments necessary to download and interpret the data shall be provided.



CONNECTED FLEET TRANSMIT

The connected fleet system shall be provided with the option to transmit the operational characteristics of the vehicle for a minimum of one (1) year subscription package chosen by the end user.

LATERAL ACCELERATION INDICATOR

A Rosenbauer Driver Warning Device (DWD) shall be installed providing an in-cab vehicle operator training device inclusive of a lateral acceleration sensor and driver awareness/alarm system. The system shall provide both visual and audio warning signals to the driver as specified in the NFPA 414 and FAA Advisory Circular 150/5220-10.

The system shall provide the ability to set an alarm threshold for the vehicle. The alarm includes an advisory light at each 10% of the threshold with a color change and audio alert up from 70% of the level.

The DWD system shall have at least the following technical ratings:

- wide range DC input from 9 to 30V
- IP65 rating or higher
- Operating temperature from -4°F to +158°F
- TFT visualization display of 3”

PUMP COMPARTMENT

The pump compartment shall be well ventilated and weatherproof.

Vents with a total of at least 10 squares inches (64.5 cm²) of ventilation shall be supplied where required.

Drains to allow collected water to run out under the vehicle shall be provided.

The floor of the compartment shall be lined with PVC matting (turtle tile) where applicable.

COMPARTMENT WEIGHT LABELS

All compartments shall be supplied a highly visible, permanently affixed label clearly stating the maximum weight that can be placed in the compartment based upon tilt table certification testing.



DRIVERS SIDE UNDERTANK COMPARTMENT

The undertank compartment shall be well ventilated and weatherproof.

Vents with a total of at least 10 squares inches (64.5 cm²) of ventilation shall be supplied where required.

Drains to allow collected water to run out under the vehicle shall be provided.

The floor of the compartment shall be lined with PVC matting (turtle tile) where applicable.

PASSENGER SIDE UNDERTANK COMPARTMENT

The undertank compartment shall be well ventilated and weatherproof.

Vents with a total of at least 10 squares inches (64.5 cm²) of ventilation shall be supplied where required.

Drains to allow collected water to run out under the vehicle shall be provided.

The floor of the compartment shall be lined with PVC matting (turtle tile) where applicable.

ROLL-UP COMPARTMENT DOORS

Primary access to vehicle compartments on the vehicle shall be via doors of a rollup design. Doors shall be aluminum rollup non-locking type with a bar latch mechanism to open/close the door. Secondary access to some vehicle storage areas will utilize a hinged panel door design.

ROLL UP COMPARTMENT DOORS

The roll up doors shall be provided with an anodized aluminum finish.

SCBA/EXTINGUISHER COMPARTMENTS

Two (2) SCBA exterior storage compartments shall be provided and located one (1) each side between the rear tandem axles. Each compartment shall hold two (2) SCBA bottles and one (1) fire extinguisher in separate protected tubes. The compartments shall be provided with a horizontally hinged, lift-up painted door with thumb latches and shall utilize a hold-open device.



REAR ACCESS LADDER

The rear face engine mod shall be provided with a ladder to access the top of the vehicle. The ladder shall be painted grey in color with the lower portion foldable for increased vehicle angle of departure.

FIXED SHELVING

One (1) fixed shelf shall be provided and mounted on each side of the engine mod compartment.

OPEN COMPARTMENT DOOR WARNING SYSTEM

There shall be an indicator light mounted on the cab dash which will be highly visible during the day or night. This indicator light shall be wired to an audible signal to advise the operator when a compartment door is open. This warning indicator light shall be interlocked with the vehicle's parking brake and shall operate whenever the parking brake is released.

HANDRAILS/GUARDRAILS

Handrails and guardrails shall be provided for personnel safety at all steps and walkways including along the top of the vehicle. The rail material shall be heat and corrosion-resistant and shall be provided with a low-maintenance, durable, and sunlight, weather, heat, and corrosion resistant finish.

STEPS, AND WALKWAYS

All step surfaces, ladder rungs, walkways, and catwalks shall be anti-skid. Anti-skid deck plating shall be provided on the top of the vehicle.

The height between steps shall be less than 20 inches (508 mm). The lower steps shall be 22 inches (558 mm) or less from the ground in the loaded condition. The tread of the bottom steps shall be at least 8 inches (203 mm) in width and succeeding steps at least 16 inches (406 mm) in width. The full width of all steps shall have at least 6 inches (152 mm) of unobstructed toe room or depth when measured from and perpendicular to the front edge of the weight-bearing surface of the step.



FIRE PUMP

The ROSENBAUER N80 fire pump meets and exceeds the stringent requirements of NFPA and is listed by Underwriters Laboratories (UL).

Make:	ROSENBAUER
Model:	N80
Material:	High strength corrosion resistant light alloy impeller and housing. Pump shaft to be stainless steel. Pump is mechanically sealed.
Drive:	By power divider
Rated capacity:	2100 gpm @ 220 psi (15 bar) tank suction operation
Number of stages:	1
Location:	In pump compartment. Pump is mounted lower than the water tank to assure gravity priming. A priming pump is supplied as standard to assist pump priming if needed
Suction line to tank:	Pneumatic actuated butterfly valve
Automatic Overheat Protection:	The pump shall be equipped with an automatic overheat protection device to prevent the pump from overheating when running the pump without discharging water (dead heading). The automatic overheat system shall monitor the water temperature inside the pump and automatically open a valve to discharge water and cool the pump. The overheat protection system will automatically reset after the water temperature has reached normal operating temperature. A visual water pump overheat indicator shall be provided in the cab.



PRIMING DEVICE

The fire pump is equipped with a ROSENBAUER KAP priming device as a standard. This allows to air evacuate the piping system quickly and also provides excellent drafting capabilities. The priming device is capable of automatic operation if the water pump requires it or can be manually operated if needed. Controls are provided in the cab and on the structural panel for manual operation.

Make:	ROSENBAUER
Model:	KAP
Type:	High speed, double piston priming pump,
Actuation:	Automatic and Manual
Drive:	Via tooth belt from main pump shaft
Suction performance:	Up to 24 ft. (7.3 m), attainable vacuum up to 96%

HEAVY GAUGE CORROSION RESISTANT STEEL PIPING

All pipe work is manufactured from heavy-gauge, corrosion resistant, hot dip galvanized steel pipe and tubing to minimize corrosion. Each pipe is pressure tested prior to assembly and the complete system is pressure tested during pumping tests.

MAIN SUCTION INLET

One (1) 5" (125 mm) gated suction inlet on the left side with 5" (125 mm) shall be installed.

A drain for bleeding air and water from the lines shall be installed.

AUXILIARY SUCTION INLET

One (1) 2 1/2" (65 mm) gated suction inlet adjacent to the main suction on the left side with 2 1/2" (65 mm) NST female swivel connection and plug shall be installed.

A drain for bleeding air and water from the lines shall be installed.

PLUG

The 2 1/2" inlet shall be provided with a 2 1/2" plug with cable.



LEFT SIDE DIRECT TANK FILL

One (1) 4" gated tank fill shall be provided located within the left side of the pump module next to the main pump intake with 4" (100 mm).

CAP

A 4" NST cap with cable shall be provided for the direct tank fill.

LEFT SIDE DISCHARGE

One (1) 2 ½" (65 mm) NSTM discharge shall be installed on the left side.

The discharge shall be equipped with a 2 ½" (65 mm) NST 30° elbow.

The discharge shall be equipped with a 2 ½" (65 mm) NST cap.

The discharge shall be equipped with a liquid filled 2 ½" (65 mm) gauge installed adjacent to the discharge or discharge control.

A drain for bleeding air and water from the lines shall be installed.

Foam metering for this discharge shall be provided by the Fix Mix around the pump foam proportioner.

RIGHT SIDE DISCHARGE

One (1) 2 ½" (65 mm) NSTM discharge shall be installed on the right side.

The discharge shall be equipped with a 2 ½" (65 mm) NST 30° elbow.

The discharge shall be equipped with a 2 ½" (65 mm) NST cap.

The discharge shall be equipped with a liquid filled 2 ½" (65 mm) gauge installed adjacent to the discharge or discharge control.

A drain for bleeding air and water from the lines shall be installed.

Foam metering for this discharge shall be provided by the Fix Mix around the pump foam proportioner.



LEFT SIDE PRE-CONNECTED SOFT JACKET HANDLINE

One (1) quick attack, pre-connected soft jacketed handline shall be provided.

The handline shall be installed on the left side of the vehicle in an enclosed compartment for easy access.

The handline will be equipped with an “auto-charge” device that will allow a single firefighter to safely deploy the handline without needing to return to the vehicle to charge the handline.

Pre-connected handline shall be capable of flowing a minimum of 95 gpm (359 lpm) per NFPA 414 utilizing 200’ (60 m) of 1 3/4” hose.

NOZZLE

The handline shall be equipped with an adjustable gallonage pistol grip nozzle with NST thread.

HOSE

200 ft (60 m) of 1 3/4" rubber-lined, soft, double-jacketed hose with NST thread shall be supplied with the vehicle in 50-foot (15 m) lengths.

PRE-CONNECT MOUNTING

The pre-connect handline shall be mounted on the floor of the compartment with turtle tile to allow drainage.

RIGHT SIDE PRE-CONNECTED SOFT JACKET HANDLINE

One (1) quick attack, pre-connected soft jacketed handline shall be provided.

The handline shall be installed on the right side of the vehicle in an enclosed compartment for easy access.

The handline will be equipped with an “auto-charge” device that will allow a single firefighter to safely deploy the handline without needing to return to the vehicle to charge the handline.

Pre-connected handline shall be capable of flowing a minimum of 95 gpm (359 lpm) per NFPA 414 utilizing 200’ (60 m) of 1 3/4” hose.



NOZZLE

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HOSE

200 ft (60 m) of 1 3/4" rubber-lined, soft, double-jacketed hose with NST thread shall be supplied with the vehicle in 50-foot (15 m) lengths.

PRE-CONNECT MOUNTING

The pre-connect handline shall be mounted on the floor of the compartment with turtle tile to allow drainage.

STRUCTURAL CONTROL PANEL

A structural package is standard on all Rosenbauer vehicles. The fully operational structural panel is located on the left-hand side of the vehicle and shall be mounted in the vehicle pump compartment and shall be provided with:

- e. Switch for water tank suction valve
- f. Switch for foam tank suction valve
- g. Switch for foam proportioning rate
- h. Electronic discharge pressure gauge (Pressure Governor System)
- i. Electronic intake pressure / vacuum gauge (Pressure Governor System)
- j. Indicator lamp for water tank suction valve open
- k. Indicator lamp for foam tank suction valve open
- l. Indicator lamp for priming pump operating
- m. High water temperature warning light
- n. Low oil pressure warning light
- o. Control lamp for PTO
- p. Switch for flushing
- q. Switch for priming pump
- r. Electronic Pressure Governor Control System with the following:
 - OK to Pump indicator
 - Electronic tachometer
 - Electronic Intake Pressure Gauge
 - Electronic Discharge Pressure Gauge
 - Idle button
 - Preset pressure
 - Engine Coolant Temperature Gauge
 - Engine Oil Pressure gauge



PSI PUMP PANEL GAUGES

The discharge gauges and pressure governor control system (PSG) shall read in PSI.

BUMPER TURRET

A Rosenbauer RM35 multi-position, high volume, low attack (HVLA) bumper turret with an automatic water/foam nozzle shall be provided. The turret will include the following features:

NOZZLE SWEEP ASSEMBLY

The nozzle sweep assembly shall consist of a double swivel joint allowing the nozzle to sweep in both horizontal and vertical planes. Internal turning vanes shall be cast into the assembly for more efficient flow. The elevation axis shall allow the nozzle to be elevated 90° or depressed 45° either side of center for a 135° vertical sweep (plus 180° rotation to park position).

The horizontal axis rotation shall allow the nozzle to be directed either side of center for up to 180° sweep.

Both horizontal and vertical drive motors shall be electric with current limiting motor protection.

NOZZLE

The nozzle shall have an automatic flow mechanism that maintains consistent pressure and includes a self-draining baffle mechanism with a water/foam dual flow range calibrated to primary turret flow requirements specified by NFPA 414 – latest edition. The nozzle must maintain a constant flow throughout the flow range in straight stream through wide fog patterns.

The nozzle shall be a non-air aspirating type with electric pattern actuation to select straight stream or dispersed pattern discharge. The nozzle shall meet or exceed the straight stream distance and pattern spray as specified by NFPA 414 – latest edition.

The nozzle shall be equipped with an automatic leveling device that will keep the nozzle parallel to the ground regardless of boom position.



MULTI-FUNCTION CONTROLS

A multi-function remote nozzle control with auto-oscillation shall be provided, joystick type. The controller shall have dual axis motion plus soft touch switches for discharge functions. Left and right motion shall control horizontal sweep. Forward and back motion shall control vertical sweep.

Joystick switch functions shall include the following operations:

Switches

- Water/Foam Discharge “ON” and “OFF”
- “FOG/STRAIGHT STREAM” selection
- Auxiliary Agent Discharge “ON” and “OFF”
- Boom “UP and DOWN” function
- “HIGH/LOW” Flow selection

Highly visible indicators shall be provided for High/Low flow position and nozzle Auto-Level “ON”. These indicators shall be positioned so that they can be seen by the operator while keeping his eyes focused on the nozzle discharge.

BOOM DESIGN

The nozzle assembly shall be attached to a boom mechanism made of heavy wall stainless steel for long life and corrosion resistance. The nozzle and mounting assembly shall be adequately reinforced to sustain all anticipated loads and reaction force of the volume nozzle.

The boom mechanism shall be capable of lowering the nozzle to near ground level or elevating the nozzle to 30° above horizontal. Boom “UP” and “DOWN” positioning shall be by momentary switches on the joystick control handle.

The boom and nozzle shall be capable of folding up and into a PARK position to provide minimum protrusion from the front of the vehicle and maximum driver visibility. This position shall also maintain the 30° angle of approach.

The boom shall move by means of an electric-hydraulic pump and hydraulic cylinder. The lift system shall be self-contained and connect directly to the chassis electrical system. Holding valves shall be installed to prevent boom drift when the hydraulic system is turned off.

TURRET LIGHT

One (1) High Intensity (LED) light shall be attached to the nozzle assembly. Lights shall rotate and elevate with nozzle movement to provide illumination of the water/foam stream.



WATER TANK

Construction: Heavy-Duty polypropylene

Baffle plates: Longitudinal, horizontal plus transversal. Baffling is provided to compartmentalize the tank minimizing “sloshing” of the tank in less than full conditions allowing for increased vehicle stability.

Fill Tower: Quick Opening Lid

Overflow Vent: Provided

Tank drain: 2" (50.8 mm) actuation from the side of the vehicle terminating 1 1/2" storz.

Tank sump: Of sufficient size to minimize swirl.

Design features: Structural integrity to withstand internal and external loads.

Best utilization of space for keeping vehicle's dimensions compact, and center of gravity as low as possible.

Excellent strength to weight ratio.

The water tank assembly shall be directly attached to the chassis with flexible rubber-steel elements. Bending and torsion loads transmitted from the vehicle frame are absorbed in those rubber steel elements.

The tank is mounted with stress isolating rubber cone bearings on the chassis frame rails. It provides optimum weight distribution on the axles assuring the required soft soil mobility and maximum traction for cross-country travel.

Non-slip walkway is fitted on top of the vehicle on all walkways.

TANK CAPACITIES

The water tank capacity shall 3,000 gallons and the foam tank capacity shall be 400 gallons.

The foam concentrate tank shall have a working capacity sufficient for two tank loads of water at the maximum tolerance specified in NFPA 412.



FIRE EXTINGUISHING SYSTEM - FOAM CONCENTRATE SYSTEM

A fully automatic ROSENBAUER foam admixing system is provided. The system is completely pre-calibrated at the factory during the initial test procedure. A test report shall be provided. The metering rate can be changed during operation of the foam system without interruption or recalibration by operating a switch in the cab or on the exterior pump panel.

Depending on the rate of discharge (GPM) from the water pump, the check valve in the control unit is activated and transfer rods adjust the metering valve to deliver foam concentrate to the eductor on the intake side of the water pump.

The metering valve regulates the exact quantity of foam concentrate to be added. During all stages of operation, a non-return valve in the foam concentrate suction line prevents water from entering the foam concentrate tank.

The system is designed for use of protein and synthetic foam concentrates as well as AFFF.

In addition to the foam main line from the foam tank there is an outside source connection, which can be used to draft foam concentrate from a container, directly into the proportioning system bypassing and preserving the onboard foam tank if needed.

Foam concentrate metering is fully automatic. The system induces a pre-selected percentage of concentrate constantly depending on the GPM flowed through the discharge side of the water pump. Change in agent discharge and agent pressures will not affect the pre-selected percentage on proportioning.

If the vehicle is re-circulating water back to the tank and the foam system is activated, the recirculation valve automatically closes to prevent foam concentrate from entering the water tank.

A system flushing mode is provided in order to clean foam concentrate from the firefighting piping system by means of inducing clean water downstream of the foam tank suction valve and discharging through the monitor or other discharge lines. An interlock system is incorporated to ensure that the flushing valve is in the closed position when the main foam valve is open.

The ROSENBAUER FIX MIX works fully mechanically, is maintenance-free, requires no adjustment to the system and does not make use of any electronic or electric components for unmatched reliability.



FOAM CONCENTRATE SYSTEM

A fully automatic ROSENBAUER foam admixing system shall be provided. The system is completely pre-calibrated at the factory during the initial test procedure. A test report shall be provided upon delivery of the completed vehicle. The foam metering rate shall be able to be changed during operation of the foam system without interruption or recalibration by operating a switch in the cab or on the exterior pump panel.

Manufacturer: ROSENBAUER

Model: XMIX 2.0 A

Type: Around-the-Pump Automatic Foam Proportioner with selectable variable rate proportioning (1%, 3%, 6%)

Foam delivery: 1.3 – 132 gpm (5-500 lpm)

Usability: For all types of Class B - foam concentrate including AFFF

Admixing rate: Between 0% and 6% adjustable

Standard setup: 1%, 3% and 6%

Usability: For all foam compounds with a viscosity up to 60 cSt (foam compounds with higher viscosity available on request)

The water cone in the pump discharge opens according to the rate of discharge (GPM) from the water pump. This cone is connected with a rod to the foam dosing disc, that meters the foam according to the water flow. In addition, a bushing with an opening will be turned by an electric motor according to the chosen proportioning rate. The foam concentrate is then delivered to the eductor on the intake side of the water pump.

During all stages of operation, a non-return valve in the foam concentrate suction line prevents water from entering the foam concentrate tank.

The system is designed for use of protein and synthetic foam concentrates as well as AFFF.

In addition to the foam main line from the foam tank there is an outside source connection, which can be used to draft foam concentrate from a container, directly into the proportioning system bypassing and preserving the onboard foam tank if needed.



Foam concentrate metering is fully automatic. The system induces a pre-selected percentage of concentrate constantly, depending on the GPM flowed through the discharge side of the water pump. Change in agent discharge and agent pressures will not affect the pre-selected percentage on proportioning.

If the vehicle is re-circulating water back to the tank and the foam system is activated, the recirculation valve automatically closes to prevent foam concentrate from entering the water tank.

A system flushing mode shall be provided in order to clean foam concentrate from the firefighting piping system by means of inducing clean water downstream of the foam tank suction valve and discharging through the monitor or other discharge lines. An interlock system is incorporated to ensure that the flushing valve is in the closed position when the main foam valve is open.

The ROSENBAUER FIXMIX 2.0 works fully mechanically, is maintenance-free, requires no adjustment to the system.

FOAM DRAFT CONNECTION

A foam draft connection terminating in 1 1/2" storz shall be provided on the left side of the vehicle for the drafting of foam to the Fix Mix foam system from an external source.

FOAM FILL/DRAIN

One (1) 1 1/2" (38 mm) storz fill connection with manually operated ball valve and internal strainer shall be located on each side of the vehicle.

110 VAC FOAM TRANSFER PUMP

A 110-VAC electrically operated foam transfer pump shall be supplied for the loading and off-loading of AFFF foam concentrate. The pump shall be supplied with 1 1/2" [38mm] Storz connections.

The pump assembly shall be portable and be supplied with a vehicle type mounting bracket in a compartment.

The pump shall have a 3' three prong household type electrical plug and have an on/off switch located on the pump.

There shall be two and clear spiral wire reinforced hoses supplied to allow transfer from bulk barrel containers to the vehicle foam tank.



The suction hose shall have a 1 1/2" [38mm] connection on one end and be open on the opposite end for insertion into a foam container. The suction hose shall be 84" long.

The discharge hose shall have two 1 1/2" [38mm] connections and be 48" long.

FOAM CONCENTRATE

The foam provided shall be 3% AFFF Mil-spec.

FOAM CONTAINER

((8)) 55-gallon (208 liter) drums shall be provided with the vehicle.

====No Additional Foam Required====

HALOTRON SYSTEM

A Fire Combat 460 lb. Halotron 1 system shall be furnished and installed on the vehicle complete with argon cylinder(s) and Halotron reservoir and all necessary plumbing components. The argon cylinder shall be mounted on the vehicle and shall allow for servicing by a single firefighter standing on the ground. Controls for the charging of the Halotron system shall be located in the cab and shall incorporate gauges to indicate argon vessel storage pressure and system charged pressure. Blow-down and re-servicing valves shall be supplied and incorporated in the system plumbing.

One (1) argon cylinder with internal pressure gauge shall be mounted on the vehicle.

HALOTRON AGENT

((460)) pounds of Halotron agent shall be provided with the vehicle.

Shipping/Storage container for Halotron

SPARE CHARGING CYLINDER

One (1) spare argon cylinder shall be supplied and shipped loose with the vehicle.



RESERVICING KIT

The Halotron system shall be supplied with the necessary fill kit to allow safe transfer of agent from the storage cylinder to the vehicle.

FIXED HOSE REEL

The reel shall be fix mounted in a compartment on the right side of the vehicle.

HOSE REEL

A single agent hose reel shall be provided and mounted in a compartment on the vehicle. The reel shall be supplied with a DC electric rewind and controls for the charging of the auxilliary agent system shall be located at the reel.

HALOTRON DISCHARGE

The reel shall be plumbed with Halotron.

BOOSTER HOSE

The reel shall have a capacity of 150' of "single agent" 1" rubber "booster" type hose for Halotron use.

HALOTRON NOZZLE

The Halotron hose reel discharge shall be supplied with a nozzle designed for Halotron use.

PROPELLANT CYLINDER LIFTING SYSTEM

An electric winch system shall be provided to assist in installation and change of the agent propellant cylinder. The lift system shall meet the intent of FAA and NFPA guidelines whereas to allow for servicing by one (1) person standing from ground level.



CHASSIS ELECTRICAL SYSTEM

Starter:	24 Volt DC starting
Chassis lighting	24 Volt DC lighting
Maintenance Switch:	A battery disconnect-isolator switch is provided and shall be mounted near the batteries. The switch will prevent starting of the vehicle during maintenance and will be wired so as to not interrupt the major power supply to the vehicle's starter.
Remote voltmeter:	A remote voltmeter energized by a switch shall be provided adjacent to the auto eject shoreline.

ALTERNATOR

A high capacity 24-volt 150-amp alternator shall be provided meeting FAA 5220-10E and NFPA 414. The alternator shall include warning light in the cab to indicate alternator failure.

BATTERY SYSTEM

Two (2) 12-volt maintenance-free batteries with frame rail mounted carrier on left rear side of vehicle wired in series 24 volt. The system shall have sufficient cold cranking battery capacity that meets the engine manufacturer's recommendation for the lowest ambient starting temperature.

JUMP/CHARGING STUDS

Battery jump studs shall be installed on the exterior rear area of the vehicle near battery box.

COOLANT HEATER

A 110 volt coolant heater shall be provided and plumbed in the coolant system to aid in cold weather starts.

The heater shall be wired to the shoreline.



110V BATTERY CONDITIONER

A 110-VAC battery conditioner shall be furnished and installed on the vehicle. The battery conditioner shall be wired to maintain the chassis battery system when the vehicle is parked.

110V AUTO-EJECT QUICK DISCONNECT

One (1) 20-amp Kussmaul Super 20 Auto-Eject quick disconnect plug/socket for the required on-board electrical components shall be installed at the rear left side of the vehicle.

WIRING

All wiring shall be numbered or color or function-coded for proper identification. Wiring shall be of stranded conductors and of a wire gauge commensurate with the anticipated maximum electrical load of the circuit.

Wires shall be insulated in accordance with the applicable standards of the Society of Automotive Engineers (SAE).

All connections shall be made with lugs or terminals mechanically secured to the conductors.

Wiring shall be secured in place and protected from heat, oil, lubricants, fire- fighting agents, and physical damage. Appropriate circuit breakers shall be provided. Circuit breaker panels shall be easily accessible for service. A copy of this diagram shall also be included in the maintenance manual.

Where wiring passes through sheet metal or structural components, rubber grommets shall be used to protect wiring and wiring looms. Precaution must be taken in all areas to guard against chafing or excessive strain.

PNEUMATIC HOSE REEL

An air hose reel with 200' of 3/8" (9.5 mm) inside diameter hose shall be supplied and mounted from the ceiling of the engine mode compartment on the right side of the vehicle. The connection will be supplied with a quick disconnect, Milton #777 female connector. Reel shall have electric rewind capability and shall have rollers attached to prevent chafing and to aid in deployment.

AIR AUTO-EJECT

A Kussmaul Auto-Eject air connection shall be supplied on the left side rear exterior of the vehicle to permit charging of the air tanks from an external air source.



EMERGENCY WARNING LIGHT SYSTEM

The vehicle shall have a custom integrated warning light system that conforms to the parameters of NFPA 414 and FAA Advisory Circular #150-5220-10E and shall consist of the following:

Rosenbauer will provide an upper and lower emergency lighting system custom designed for the vehicle that is integrated into the body structure to provide illumination in a 360 pattern around the vehicle. The lighting system shall consist of high intensity LED flashers set in a varying flashing pattern.

Integrating the lighting system into the body structure eliminates the need to position varying styles of light bars on the vehicle and the utilization of LED flashing units assures high visibility, minimal maintenance and long bulb life.

WARNING LIGHT COLOR

The lights shall be red in color.

LOWER WARNING DISSABLE SWITCH

A switch shall be provided in the cab to disable the lower warning lights

AIR TRAFFIC WARNING LIGHTS

Two (2) amber LED lights shall be mounted on top of the vehicle, one (1) at the left front and one (1) at the right rear.

VEHICLE RUNNING LIGHT SYSTEM

Lower vehicle clearance marker lights, with reflectors shall be furnished and installed.

HEADLIGHTS

Four (4) Front high intensity head lamps w/ high/low beam (two pairs).

WIG-WAG HEADLIGHT FLASHER

A wig-wag flasher shall be installed in the headlights. The wig-wag headlight flasher shall activate when the vehicle parking brake is released, and the Master Warning Light Switch is "ON".



CAB INTERIOR LIGHTS

Three (3) interior cab dome lights selectable between red and white lens illumination and capable of manual or automatic operation shall be installed.

BRAKE/TAILLIGHTS

Red LED rear face upper lights with reflector shall be installed. These lights shall function as stop lights and taillights.

REVERSE LIGHTS

Two (2) LED white, reversing lights shall be installed. These lights shall illuminate when the vehicle transmission is placed in reverse.

DIRECTION INDICATING LIGHTS

LED directional (signal) indicators front and rear shall be installed. These lights shall also function as road hazard warning lights.

LICENSE PLATE

A lighted license plate bracket shall be installed at the front and rear.

FOG LIGHTS

Clear fog lights shall be provided on the lower front face of the cab with switch located in the cab.

COMPARTMENT LIGHTS

Each compartment will be supplied with weatherproof LED strip lights that are switched to automatically light when compartment doors are opened, and the vehicle master switch is in the “on” position. This includes pump, undertank, and engine compartments.



UNDER TRUCK LIGHTING

Under truck lights shall be provided under the engine module allowing proper area work lighting around the rear of the vehicle. The system shall be wired to the vehicle's parking brake to activate whenever the parking brake is set.

Under cab lighting shall be provided wired to activate with the cab doors opening when the interior cab dome light is in the door/center position.

DECK and WORK LIGHTS

Upper deck of the truck and work surface lighting around the vehicle shall be provided. The system shall be wired to the vehicle's parking brake to activate whenever the parking brake is set.

FORWARD SCENE LIGHTS

Two (2) 24V-DC powered LED scene lights shall be mounted on the forward cab roof to provide illumination of the work areas forward of the vehicle. These lights shall be operated by a single cab mounted switch.

LED SCENE LIGHTS

A total of four (4) high mounted 24-volt LED floodlights shall be provided and mounted two (2) each side of the vehicle controlled from a switch in the cab.

VEHICLE GENERATOR SYSTEM

The vehicle generator system shall be an ONAN 10KW 120/240V AC hydraulically driven PTO generator system with the following components:

The system shall be controllable from the cab via a low voltage switch with an indicator to advise of the system's operation. In the event of a malfunction, the system shall automatically shut down. All high voltage wiring shall be contained in conduit and shall be tied to a circuit breaker box. The high voltage system shall meet all national electrical codes and shall be NEMA compliant.

The auxiliary power system shall include:

- FROG meter (indicates system operation, hertz and voltage being supplied by generator).
- Circuit breaker box.
- Wiring and switches as required.



SIDE SCENE LIGHTS

Two (2) 220V-AC powered LED Fire Research Spectra 20k lumen scene lights shall be mounted one (1) each side of the vehicle to provide illumination of the work areas adjacent to the vehicle. These lights shall be operated by a single cab mounted switch.

ELECTRIC CORD REEL

One (1) electric cord reel 200 ft (61 m) of 12/3 safety yellow wiring shall be provided. Reel shall be tied to a 20-amp circuit breaker. The cord reel shall have a DC electric rewind motor and shall be mounted in a compartment on the left side of the vehicle. The cord reel shall have a means of manually rewinding if needed. The cord reel will be supplied with a roller system to prevent chafing of the cord and to aid in its deployment. The cord shall be terminated in a twist lock plug conforming to NEMA L5-20.

LIGHTED WEATHERPROOF JUNCTION BOX

A weatherproof junction box with lighted indicator shall be provided with a L5-20 receptacle plug to be used with the cord reel.

JUNCTION BOX OUTLETS

Four (4) outlets shall be provided in the junction box. Two (2) 15-amp twist lock and two (2) 15-amp household.

120V WEATHERPROOF OUTLETS

Two (2) 120 VAC 15-amp duplex receptacles w/ weatherproof covers shall be provided one (1) each side of the vehicle engine mod. The receptacles shall be wired to individual circuit breakers and shall be 15-amp household receptacles.



54' STINGER

54' HIGHT REACH EXTENDABLE TURRET

An articulating, telescoping aerial device with elevated turret shall be installed behind the cab on a pedestal above the frame rails mounted for maximum stability and best weight distribution. Elevation of the turret shall be approximately 54 feet [16.5m], measured from ground level (subject to mounting base height on vehicle). Maximum horizontal reach shall be approximately 37.5 feet [11.4m], measured from the center of turntable rotation. The turret shall be capable of being positioned within 2 feet [.6m] of ground level in front of the vehicle. The design of the boom shall not allow the boom to come into contact with the cab without the use of any electronic safety devices.

54' MAST

The lower mast shall be a ladder structure made from 6" x 4" x 1/4" [152.4 mm x 101.6 mm x 6.35 mm] high-strength steel tubing. The lower mast shall be elevated by two 4" [101.6 mm] bore x 30" [762 mm] stroke hydraulic cylinders.

54' BOOM

The telescopic boom sections shall consist of two extruded aluminum-alloy, heat-treated rectangular tubes. The size of the larger upper boom shall be 13 1/4" x 9 1/4" (336.6 mm x 235 mm) and the smaller (inner) upper boom shall be 10" x 7 3/4" [254 mm x 196.9 mm]. The booms shall be aluminum alloy 6061-T6. The upper boom shall be elevated by one 6" [152.4 mm] bore x 30" [762 mm] stroke hydraulic cylinder. The upper boom internal hydraulic extension cylinder shall be 2-1/2" [63.5 mm] bore x 195-1/4" [4959.35 mm] stroke.

No Simulations Training

OPERATION MANUAL

At time of delivery, an aerial manual shall be supplied which shall include aerial operation overview, service documentation, wiring schematics and technical high-level bill of material drawings. The documentation shall address at a minimum the inspection, service, and operations of the fire apparatus and all major components thereof. This documentation and manuals shall be provided in the English language.



PARTS & LABOR WARRANTY

Rosenbauer Aerials shall provide a one (1) year or 100,000 miles overall parts warranty as follows:

The aerial manufacturer shall warrant to the purchaser that the complete Stinger device and system was manufactured to comply with the manufacturer's bid specifications and free in all respects from any defects in materials or workmanship.

The warranty shall expire on the earlier of one (1) year or 100,000 miles from the date of delivery or acceptance of the apparatus. This warranty shall include all parts. The cost of transportation of vehicle to the warranty location shall be provided by the purchaser.

The obligations of the aerial manufacturer, pursuant to the foregoing warranty, with respect to the Stinger shall be limited to the cost of bringing such Stinger into compliance with the specifications or of removing any defects in materials or workmanship.

All warranty work performed must be completed at the Rosenbauer facility or a Rosenbauer approved service center.

Any work or alterations on or misuse of the Stinger performed by anyone other than the aerial manufacturer's designated personnel, either before or after delivery to the purchaser, shall not be warranted by the manufacturer and shall cause to make this warranty invalid.

This warranty shall not apply to those items which are usually considered normal maintenance and upkeep services, including, but not limited to electrical lamps, valve seals, normal lubrication and/or proper adjustment of minor items.

This warranty is in lieu of all other warranties, expressed or implied, and all other obligations or liabilities on our part. We neither assume nor authorize any person to assume for us any liability in connection with the sales of our apparatus unless made in writing by Rosenbauer Aerials.

STINGER PAINTED

Booms, mast and pedestal assemblies shall be pre-cleaned, chemically etched, primed with PPG #F3980 primer and finished with Black PPG# 9300 black high-quality automotive finish.



ROTATION SYSTEM

The turntable bearing shall be 23½” [596.9 mm] minimum outside diameter with a minimum rating of 130,000 lbs.-ft. [176.3 kN-m] overturning moment. The rotation drive shall utilize a spur gear running on the exterior of the rotation bearing. The spur gear shall be on the output of a planetary reduction gearbox assembly. This planetary gear box shall have a spring-applied, hydraulically released brake and is to be internally driven by a reversible high torque, low speed hydraulic motor. The gearbox design shall prevent drifting of the turntable. The rotation system shall include a 4" diameter water swivel mounted directly to the base super structure and shall rotate with the turntable assembly. The rotation system also includes a Can-BUS controlled encoder that monitors the rotation and bedding of the boom device.

The turntable is bolted to the bearing and provides the pivot and cylinder mount for the lower mast of the elevating boom.

PEDESTAL

The Stinger shall set on top of a pedestal that is a tubular structure in the lower half to leave as much open space as possible to accommodate pump piping. Each of the four tubular structures shall be bolted for easy removal and access to the main pump. The four legs shall be bolted directly to a base plate mounted directly to the frame.

CONTROL PANEL

The boom and the turret with its nozzle (and optional piercing device) shall be controlled by the single multi-function joystick. It is possible to run combined movements of the boom and the turret (or the piercing tool) with this kind of joystick.

When the Stinger is not activated the main joystick controls the turret. In case the Stinger is activated, the main joystick controls the boom and a small thumb-joystick, installed on top of the main joystick controls the turret.

The joystick has three axis controls. Left and right motion shall proportionally control turntable rotation. Forward and back motion shall proportionally control vertical sweep. Twisting the joystick right and left proportionally extends and retracts the fly boom.

The thumb-joystick on has dual axis control. Left and right motion shall control horizontal sweep of the turret. Forward and back motion shall control vertical sweep.

Buttons around the thumb-joystick shall control the nozzle functions.



These functions are:

- **straight stream/fog patterns**
- **high/low flow selection**
- **auto-level**
- **dry-chem (option)**

The multi-function joystick control shall include LED indicators relating to nozzle functions. When a function has been activated, the indicator shall illuminate.

Forward and back motion shall proportionally control lower mast and the upper boom elevation until the lower mast is fully elevated. When lower mast is fully elevated, the forward motion shall proportionally control the upper boom down and the back motion shall proportionally control the upper boom up with pre-programmed coordinated motion of the boom.

The boom control valves shall be equipped with manual override feature to use in the case of electrical failure to the valves.

An automated programmable logic controller shall be provided for standard operations of hydraulic controls. The automated controller shall accept input from sensors and the single multi-function joystick and direct these inputs to the hydraulic valves. Joystick motion shall be "ramped" so that slow precise boom positioning can be achieved, with operating speed increasing as the joystick is moved to its travel limit. Cushioned stops shall be programmed to automatically slow down boom motion as cylinders reach end of stroke.

STOW FEATURE

The "STOW" feature shall be activated from any boom position when the operator is ready to bed the unit. When activated, the "STOW" operation shall rotate, retract and lower the upper boom and lower mast to the bedded position in the proper sequence under programmed control.

The programmed logic control system (PLC) shall operate as a distributed control system with Controller Area Network (CAN) type communications bus per ISO standards. The PLC shall provide overall system management and communication. Boom tip and mast positions shall be sensed with encoder type devices to assure maximum reliability and repeatability. A plumbed override switch shall be included in the cab to override safety functions in case of sensor defects.



When the truck is power up, it will be in **STOWED ATTACK** position. Cab-mounted switches and indicator lights shall be provided to allow the operator to select the following boom positions:

- **BOOM STOWED**
- **HIGH ATTACK**
- **MID ATTACK**
- **LOW ATTACK**

PIERCING FEATURE

When activating the piercing tool, the turret will rotate out of the way and the piercing tool is active. The thumb-joystick switches from turret control to pierce control.

Forward and back motion shall control vertical sweep of the piercing tool.

Buttons around the thumb-joystick shall control the pierce functions:

- **retract and slowly extend the piercing needle**
- **auto-level**

An additional button besides the joystick fires the piecing tool.

SWIVEL

There shall be a 4" waterway swivel. It shall be installed on the pedestal and rotate with the turntable 30 degrees to the left and 30 degrees to the right.

== 54' Stinger Waterway & Capabilities - 0.000 ==

PERFORMANCE CAPABILITIES

The water discharge piping system shall be capable of flowing 1,000 GPM [3,785 LPM] with the boom elevated while creating minimum friction loss. It shall meet all discharge performance requirements set forth in FAA Advisory Circular #150/5220-10E or latest standard.

WATERWAY

A waterway shall be provided from the pedestal to the tip of the boom. The telescoping waterway shall be fabricated of aluminum. The lower mast waterway and extending boom shall have a 4-1/2" to 4" O.D.



HALOTRON TUBING

There shall be Halotron line consisting of a 3" to a 2.5" telescopic tube on the left hand side of the boom. A 1-1/2" hose is routed from the base of the pedestal and connected to the rear of the telescopic Halotron tube.

MONITOR

The maximum output of the nozzle shall be 3.800 lpm (1.000 gpm). However, the nozzle must operate over a minimum 180° horizontal sweep (90° right to 90° left) and 200° vertical range (100° up to 100° down).

With the o-stream nozzle it should be possible to adjust the spay pattern from full jet spay to disperse spray. The o-stream nozzle with fluidically optimized water guidance allows most effective transformation of water pressure into speed. It should be possible to change the flow rate from full flow to 50% flow in the nozzle.

Electric motors permit infinite adjustment of spray pattern (from full jet to disperse spray) and rate.

All drives of the turret should be electric driven.

The monitor shall be controlled by the CAN bus system and shall be operated with the same joystick as the boom.

It should be able to level the turret with the vehicle. In addition the turret shall have the ability to drive in oscillation mode. In this mode it automatically moves the turret along the shape of a rectangle. Swivel angle and height of the rectangle are adjustable during operation.

PIERCING TOOL

An independent auxiliary nozzle with a piercing applicator shall attach to the telescoping boom to provide remote controlled penetrating capability. A high tensile steel tip shall provide a spray pattern with 250 GPM [950 LPM] or more flow. The piercing nozzle shall have the capability to provide a separate water/foam discharge with selector switch labeled "Pierce/Volume". The tip shall be removable. The piercing lance shall be retracted inside a tube when not in use to protect the piercing tip. The lance shall be hydraulically fired with amplified hydraulic flow from three 2,800 PSI (193 bar) hydraulic accumulators for maximum piercing velocity and impact.



The piercing nozzle shall be controlled by switching the single multi-function joystick to piercing mode. Moving the joystick forward lowers piercing tip and pulling back raises the tip. Rotation up and down of the piercing device is accomplished with an enclosed hydraulic helical rotator with counterbalance valves to protect against accidental rotation.

When pierce mode is selected, the volume nozzle shall automatically rotate to a park position to provide maximum piercing depth.

VALVES PIERCING TOOL

Piping and hydraulic valving to the HRET piercing device shall be provided. The piping and hydraulic valving will be capable of operating the piercing device rotation, piercing and reloading functions.

An additional 2" ball valve shall be provided to allow flow to the piercing device. An auto drain shall be installed near the piercing tool to allow for water to be dispersed.

TRACKING LIGHTS

Two (2) Whelen Micro Pioneer™ Model # MPP4WCS lights shall be installed on the base boom. The 45 watt +24 DC, 3.25 Amp, Micro Pioneer lighthouse configuration shall incorporate 12 white Super-LED® with a TIR reflector and a polycarbonate cover with a chrome finish. The MPP4WCS lights shall be activated from the tracking lights switch on the main control station and have an On/Off switch covered by a rubber boot and a black fiberglass enforced polycarbonate handle. The MPP4WCS shall have a standard 8° spot light lens. The MPP4WCS light shall have 4,100 usable lumens.

TIP MARKER LIGHT

One (1) amber Tomar strobe light, model # 470S-1280-A, shall be installed at the tip of the boom.



TIP LIGHT

Two (2) Whelen Micro Pioneer™ Model # MPP4WCS shall be installed on the boom. The 45 watt +24 DC, 3.25 Amp, Micro Pioneer lighthouse configuration shall incorporate 12 white Super-LED® with a TIR reflector and a polycarbonate cover with a chrome finish. The MPP4WCS lights shall be activated from the tracking lights switch on the main control station and have an On/Off switch covered by a rubber boot and a black fiberglass enforced polycarbonate handle. The MPP4WCS shall have a standard 8° spot light lens. The MPP4WCS light shall have 4,100 usable lumens.

Hydraulic Oil Tank, New Style

EMERGENCY BACK UP PUMP

A self-contained hydraulic power unit consisting of an integral pump and direct current motor shall be provided as an alternative power source in event of engine-driven hydraulic pump failure. The unit shall be capable of returning the booms to a bedded position.

CAMERA WIRING

Wiring shall be installed up the boom for a camera to be connected to. The camera shall be installed at the tip of the boom.

BRONZE BUSHINGS

All bushings on the device shall be bronze.

Export Parts Received Freight Charge

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Rosenbauer America, Inc.

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PART G – FORMS

Note: This form must be submitted with the Bidder’s bid submittal

FORM 1: BIDDER’S CERTIFICATION

I have carefully examined the entirety of this Request for Bids (RFB) which includes Instructions for Bidders, Special Instructions and Requirements, Specification/Scope, and Insurance and Bond requirements. I acknowledge receipt and incorporation of the following addenda. The cost, if any, of such revisions has been included in my bid pricing.

Addendum No. ___; dated _____ Addendum No. ___; dated _____
Addendum No. ___; dated _____ Addendum No. ___; dated _____

I propose to perform the work/offer the items described in this RFB and I agree to hold pricing for at least 120 calendar days to allow the Authority time to properly evaluate this bid. I agree 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.

Rosenbauer Minnesota, LLC

NAME OF BUSINESS

5240 257th Street

MAILING ADDRESS

Christian Klee

AUTHORIZED SIGNATURE

Wyoming, MN 55092

CITY, STATE & ZIP CODE

Christian Kleebauer - CEO

NAME, TITLE, TYPED

651-462-1000 / 651-462-9111

TELEPHONE NUMBER / FAX NUMBER

41-1808379

FEDERAL IDENTIFICATION #

mgoldeman@rosenbaueramerica.com

EMAIL ADDRESS

Notary Public – State of Minnesota

County of Chisago

Sworn to and subscribed before me by means of physical presence or online notarization this 28 day of June, 2022.

Personally known or produced identification _____

(Type of identification) _____

Michelle Goldman

Printed typed or stamped commissioned name of Notary Public





PART G – FORMS

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I have carefully examined the entirety of this Request for Bids (RFB) which includes Instructions for Bidders, Special Instructions and Requirements, Specification/Scope, and Insurance and Bond requirements. I acknowledge receipt and incorporation of the following addenda. The cost, if any, of such revisions has been included in my bid pricing.

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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.

<u>Rosenbauer Minnesota, LLC</u>	<u>5240 257th Street</u>
NAME OF BUSINESS	MAILING ADDRESS
 	<u>Wyoming, MN 55092</u>
AUTHORIZED SIGNATURE	CITY, STATE & ZIP CODE
<u>Christian Kleebauer - CEO</u>	<u>651-462-1000 / 651-462-9111</u>
NAME, TITLE, TYPED	TELEPHONE NUMBER / FAX NUMBER
<u>41-1808379</u>	<u>mgoldeman@rosenbaueramerica.com</u>
FEDERAL IDENTIFICATION #	EMAIL ADDRESS

Notary Public – State of Minnesota
County of Chisago

Sworn to and subscribed before me by means of physical presence or online notarization this 28 day of June, 2022.

Personally known or produced identification _____

(Type of identification) _____
Michelle Goldman

Printed typed or stamped commissioned name of Notary Public



FORM 2A: OFFICIAL BID FORM-BASE BID for Scope of Work in Exhibit A: FAA Advisory Circular 150/5220-10E

BID NO. RFB 21-46CDE

BIDDER'S NAME: Rosenbauer Minnesota LLC

BIDS ARE DUE ON: **FRIDAY, JULY 2, 2021**

PRIOR TO 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 solicitation documents, agrees to furnish all labor, materials, equipment, and other incidental items, and services necessary to the:

PURCHASE AND DELIVERY OF AIRCRAFT RESCUE AND FIRE FIGHTING CRASH TRUCK FOR LEE COUNTY PORT AUTHORITY

in full accordance with the solicitation and contract documents and all other documents related thereto on file in the Purchasing Office and, if awarded the bid, to complete the said work within the time limits specified for the pricing awarded, which is based on the following bid schedule:

BASE BID (PER EXHIBIT A: FAA ADVISORY CIRCULAR 150/5220-10E):

PURCHASE AND DELIVERY OF ONE (1) CRASH TRUCK \$ 915,369.00

BASE BID GRAND TOTAL: \$ 915,369.00

Nine Hundred Fifteen Thousand Three Hundred Sixty-Nine Dollars
(Written)

How many days are necessary to complete (including delivery) the Base Bid requirements:

395 calendar days from award of bid.

X Copy of quality guarantee/warranty is enclosed per Part B., B.09



FORM 2B: OFFICIAL BID FORM – EXHIBIT B: REQUESTED ADDITIONS BASED ON LOCAL REQUIREMENTS

For each Line Number listed below, Bidder must indicate which of the following classifications apply (choose only one):

- **Standard and Included in Base Bid:** – requested addition is “off the shelf” and already supplied in the Base Bid
- **Not Available:** bidder is unable to supply requested addition
- **Available:** bidder can supply requested addition, but for an additional price (please use the last column in the table below to indicate the Line Number pricing).

Line Number	Section Number	Description	Please select one of the following three choices for each Line Number by marking an “X”			Only provide pricing if “Available” was marked
			Standard and Included in Base Bid	Not Available	Available	Price
1	3.1.4.2	Temperature Range: The apparatus will be capable of satisfactory storage and operation in Tropical environments. The air conditioning systems must be enhanced with additional cab cooling capabilities to meet the local needs for extended standby or emergency operations in the high heat / high humidity environment encountered year round in Southwest Florida	X			
2	3.3.11.2	Compressed air shoreline or vehicle mounted auxiliary air compressor: Pre-installed Auto-Ejecting shoreline air port for the air system and an on-board air compressor			X	\$1,356.00
3	3.4.3	Instruments and Controls: An externally mounted Pre-start or Remote Start control system that allows for the driver/operator to activate the start-up sequence for the apparatus and starting of the apparatus all from the exterior of the truck. All dash lights and displays are dimmable for night time operations.			X	\$1,288.00
4	3.4.5	Forward-Looking Infrared (FLIR): FLIR camera capable of providing pinpoint temperature readings.		X		

RFP 21-46CDE: PURCHASE AND DELIVERY OF AIRCRAFT RESCUE AND FIRE FIGHTING CRASH TRUCK FOR LEE COUNTY PORT AUTHORITY



			Please select one of the following three choices for each Line Number by marking an "X"			Only provide pricing if "Available" was marked
Line Number	Section Number	Description	Standard and Included in Base Bid	Not Available	Available	Price
5	3.6.3	Foam System: An On-board Input-based foam testing system to be included on this apparatus. This system must allow for the testing of the proportioning system without the need to discharge AFFF to the environment.			X	\$7,900.00
6	3.6.3 and 3.8	Foam System & Halotron I system per Exhibit A: Advisory Circular 150/5220-10E, Appendix A.5.1 Addition: 6.1: This apparatus delivered with a complete amount of AFFF and Haltron I so that the truck can be tested, fully refilled, and put into active service immediately upon arrival.			X	\$19,400.00
7	3.6.7	Pre-connected Handlines: In addition to the pre-connected handline, an additional 1" x 150' reeled hoseline rated for 95gpm @ 100psi is to be located in a compartment on the opposite side of the apparatus from the Halogenated agent reeled hoseline.			X Water Foam Reel	\$2,980.00
8	3.6.5.1	HRET Trainer Aircraft Skin Penetration Training Device per Exhibit A: Advisory Circular 150/5220-10E, Appendix B.1: Aircraft Skin Penetration Training Device to be included in the purchase in order to satisfy FAA Advisory Circular 150/5210-23 which requires that all personnel operating an HRET-equipped truck be field trained.			X	\$25,025.00
9	3.8	Halotron I system: An inline test valve for the Haltron System such that the system can be tested with a very limited waste discharge of agent.			X	\$890.00

RFP 21-46CDE: PURCHASE AND DELIVERY OF AIRCRAFT RESCUE AND FIRE FIGHTING CRASH TRUCK FOR LEE COUNTY PORT AUTHORITY



			Please select one of the following three choices for each Line Number by marking an "X"			Only provide pricing if "Available" was marked
Line Number	Section Number	Description	Standard and Included in Base Bid	Not Available	Available	Price
10	3.9.7	<p>Emergency Warning Lights: All emergency lights and warning devices necessary to meet the requirements of NFPA 1901 for operation on public roadways are equipped on the apparatus. Additionally, emergency warning lights must not shine into the cab in such a way as to affect the driver's or rider's vision during daytime or nighttime operation</p>		X		
11	3.10.8	<p>Radio Circuit: In addition to the "circuit for radios" provided in Exhibit A: Advisory Circular 150/5220-10E, Three (3) radios must be included and installed as follows:</p> <ul style="list-style-type: none"> Two (2) Multiband (700MHz-, 800MHz-, and VHF-capable) APCO P25-compatible (per Lee County, Florida, Public Safety Radio standards) radio transceivers One (1) Avionic (Aircraft) Band transceiver with Dual-Watch capability. <p>The primary multiband transceiver and the Avionic transceiver must be connected to a wired headset system with headsets for each seating position and be capable of receiving transmissions from both radios simultaneously and transmission from each radio as required by the driver/operator. These radios must also be capable of transmitting and receiving radio traffic without the use of the headsets, using speakers and microphones. The radio circuits must also have proper isolation to reject any electrical interference from items such as the generator, LED lighting, and emergency warning systems.</p>			X	\$31,563.00

RFP 21-46CDE: PURCHASE AND DELIVERY OF AIRCRAFT RESCUE AND FIRE FIGHTING CRASH TRUCK FOR LEE COUNTY PORT AUTHORITY



			Please select one of the following three choices for each Line Number by marking an "X"			Only provide pricing if "Available" was marked
Line Number	Section Number	Description	Standard and Included in Base Bid	Not Available	Available	Price
12	N/A	Lubrication: A continuous central lubrication system instead of individual fittings.			X	\$4,368.00
13	N/A	Fire Fighting Systems: Undertruck nozzles with a rate of at least 15 GPM, and a minimum of four (4) nozzles.			X	\$1,249.00
14	N/A	Water Tank Fills: Four (4) direct water tank fills: Two (2) each on the left side of the tank and Two (2) each on the right side of the tank to accommodate a 5" Storz and 2½" intakes at the same time		X		
15	N/A	Agent Piping Systems: All piping for agents (water/foam) must be stainless steel when possible in order to extend the life of the apparatus and reduce corrosion in a high humidity environment.			X	\$6,707.00
16	N/A	Body: Exterior Water & Foam level lights. These lights must be separated by a distance of at least six feet, where practical, and indicate remaining agent capacity as Full, ¾, ½, or ¼.			X	\$4900.00
17	N/A	Body: Lockable Compartment Doors with three (3) sets of keys for the purposes of safety & security when the apparatus is out of service or off of the airport.			X	\$165.00
18	N/A	Exterior Graphics Package per Exhibit A: Advisory Circular 150/5220-10E, Appendix A.1.2 Addition: 1.3.4 (Please see Table in Exhibit B for details)			X	\$1,650.00

RFP 21-46CDE: PURCHASE AND DELIVERY OF AIRCRAFT RESCUE AND FIRE FIGHTING CRASH TRUCK FOR LEE COUNTY PORT AUTHORITY



			Please select one of the following three choices for each Line Number by marking an "X"			Only provide pricing if "Available" was marked
Line Number	Section Number	Description	Standard and Included in Base Bid	Not Available	Available	Price
19	N/A	<p>Window Tinting:</p> <p><u>Front Windshield</u></p> <ul style="list-style-type: none"> • % Visible Light Transmittance = 71% • % Visible Light Reflectance (Exterior) = 8% • % Ultraviolet Light Blocked = >99% • % Total Solar Energy Rejected (TSER) = 40% <p><u>Side Windows (All)</u></p> <ul style="list-style-type: none"> • %Visible Light Transmittance = 38% • % Visible Light Reflectance (Exterior) = 6% • % Ultraviolet Light Blocked = >99% • % Total Solar Energy Rejected (TSER) = 53% 			X	\$2,220.00
20	N/A	<p>Ladder: A 24 foot extendable removable Ladder capable of being mounted to the exterior of the apparatus for aircraft access.</p>			X	\$970.00
21	N/A	<p>Shelving: Adjustable shelving in all storage compartments.</p>			X	\$260.00 per shelf
22	N/A	<p>Documentation: Four (4) physical copies and one (1) electronic copy of all manuals listed in Exhibit A: Advisory Circular 150/5220-10E, Section 3.1.1.</p>			X	\$250.00



How many total days are necessary to complete requirements (including delivery) for the Base Bid **and** Requested Additions Based On Local Requirements: 395 calendar days from award of bid.



FORM 3: LOBBYING AFFIDAVIT

State of: Minnesota

County of: Chisago

Christian Kleebauer

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 CEO or Rosenbauer Minnesota, 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 Request for Bids from Lee County Board of Port Commissioners, members of the Airports Special Management Committee or employees of Lee County Port Authority, individually or collectively, regarding this Request for Bids. The prospective Bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. section 1352, 49 CFR Part 20 and Lee County Ordinance No. 03-14 relating to lobbying activities.

[Signature]
AFFIANT

The foregoing instrument was acknowledged before me on June 28, 2021, by

Christian Kleebauer - CEO (name of person, officer or agent, title of officer or agent), of

Rosenbauer Minnesota, LLC (Corporation or partnership, if applicable), a

Delaware (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 produced Personally known

as identification by means of physical presence or on line notarization.

[Signature]
Signature of person taking acknowledgment

Michelle Goldeman

Name typed, printed, or stamped

Notary

(Title or rank)

20323351

(Serial or Commission No.)



NOTE: THIS FORM MUST BE COMPLETED AND SUBMITTED BY ALL BIDDERS 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 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 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.

[Handwritten signature]
[Signature]

Notary Public

State of Minnesota

County of Chisago

Sworn to and subscribed before me this 28 day of June, 2021, by

Christian Kleebauer by means of [x] physical presence or [] online

notarization who produced the following as identification personally known

(Type of identification) or is personally known to me. My Commission Expires 1/31/2022

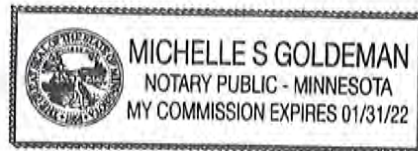
[stamp or seal]

[Handwritten signature: Michelle Goldeman]

[Signature of Notary Public]

Michelle Goldeman

[Typed or printed name]





FORM 5: SCRUTINIZED COMPANIES CERTIFICATION

Bidder hereby certifies under penalties of perjury as of the date of submission of its RFB to provide goods and services to 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 Statutes; 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 Statutes, that result in Bidder being placed on the Scrutinized Companies that Boycott Israel List, during the term of any contract awarded pursuant to this Request for Bids.

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 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 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 LEE COUNTY PORT AUTHORITY PRIOR TO ENTERING INTO A CONTRACT OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

[Handwritten Signature]

[Signature]

Notary Public

State of Minnesota

County of Chisago

Sworn to and subscribed before me this 285 day of June, 2021, by Christian Kleebauer by means of physical presence or online

notarization who produced the following as identification personally known

(Type of identification) or is personally known to me. My Commission Expires 1/31/2022.

[stamp or seal]

[Handwritten Signature: Michelle Goldman]

[Signature of Notary Public]

Michelle Goldman

[Typed or printed name]





**FORM 6: CERTIFICATE OF BUY AMERICAN COMPLIANCE FOR
MANUFACTURED PRODUCTS**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. **Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter "X"**.

- Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- a) Only installing steel and manufactured products produced in the United States;
 - b) Installing manufactured products for which the Federal Aviation Administration (FAA) has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
 - c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing U.S. domestic product.
3. To furnish U.S. domestic product for any waiver request that the FAA rejects
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

- The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that supports the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
3. To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
4. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver – The cost of the item components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:

- a) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition



- Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
 - c) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

Type 4 Waiver – Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25 percent. The required documentation for a Type 4 of waiver is:

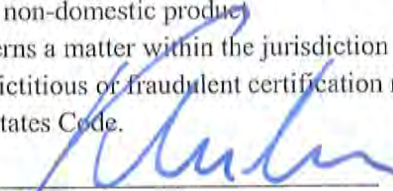
- a) Detailed cost information for total project using U.S. domestic product
- b) Detailed cost information for total project using non-domestic product

False Statements: Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

6/28/2021

Date
Rosenbauer Minnesota, LLC

Company Name



Signature
CEO

Title



FORM 7: CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

For the purpose of this form, “applicant” refers to the successful bidder.

The applicant must complete the following two certification statements. **The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response.** The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- 1) The applicant represents that it is is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is is not is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government’s interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency’s SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

To: Lee County Port Authority
Southwest Florida Int'l Airport
11000 Terminal Access Rd
Suite 8671
Fort Myers, FL 33913

Date: June 24, 2021

We hereby propose and agree to furnish, after your acceptance of this proposal and the proper execution by the Lee County Port Authority, hereinafter called the Buyer and an officer of Rosenbauer Minnesota, LLC, hereinafter called the Company, the following apparatus and equipment.

One (1) Rosenbauer Panther 6x6 HRET Apparatus Body	\$915,369.00
Gross due upon completion and delivery Total	\$915,369.00*

Nine Hundred Fifteen Thousand Three Hundred Sixty-Nine Dollars*
DOES NOT INCLUDE TAX, BID VALID FOR 120 DAYS

All of which are to be built in accordance with the specifications, clarifications and exceptions attached, and which are made a part of this agreement and contract.

DELIVERY: The estimated delivery time for the completed apparatus, is to be made 395 days after receipt of and approval of this contract duly executed, (chassis and (or) major components must arrive within 150 days or delivery may be extended), subject to all causes beyond the Company's control. The quoted delivery time is based upon our receipt of the approved specifications within 60 days of contract signing. "Delivery" means the date company is prepared to make physical possession of vehicle available to the customer.

CONTRACT CHANGES: After execution and acceptance of this Contract, the Buyer may request that the Company incorporate a change to the Products or the Specifications for the Products by delivering a Change Order to the Company; provided, however, that any such Change Order must be in writing and include a description of the proposed change sufficient to permit the Company to evaluate the feasibility of such Change Order. Within seven (7) working days of receipt of a Change Order, the Company will inform the Buyer in writing of the feasibility of the Change Order, the earliest possible implementation date for the Change Order, of any increase or decrease in the Purchase Price resulting from such Change Order, and of any effect on production scheduling or delivery resulting from such Change Order. The Company shall not be liable to the Buyer for any delay in performance or delivery arising from any such Change Order. Purchase Price may be modified only by mutual written agreement of the Parties because of changes to the Apparatus required or requested by the Buyer during the construction process pursuant to Appendix C, Change Order Policy. Any changes in the Purchase Price resulting from changes to the Apparatus required or requested by the Buyer during the construction process shall be stated in the Change Order signed by both parties. Additional Changes: If various state or federal regulatory agencies (e.g. NFPA, DOT, EPA) require changes to the specification and/or the product that result in a cost increase to comply therewith this cost will be added to the Purchase Price to be paid by the customer.

FORCE MAJEURE: The Company shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond the Company's control which make the Company's performance impracticable, including but not limited to civil wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, any act of government, delays in transportation, inability to obtain necessary labor supplies or manufacturing facilities, allocation regulations or orders affecting materials, equipment, facilities or completed products, failure to obtain any required license or certificates, acts of God or the public enemy or terrorism, failure of transportation, epidemics, quarantine restrictions, failure of vendors (due to causes similar to those within the scope of this clause) to perform their contracts or labor troubles causing cessation, slowdown, or interruption of work.

PAYMENT TERMS: Final payment for the apparatus shall be made at time of delivery or pick up of the completed vehicle. It is the responsibility of the Buyer to have full payment ready when the apparatus is complete and ready to deliver. If payment is delayed or delivery is delayed pending payment, a daily finance and storage fee may apply. Upon delivery of the apparatus or upon pickup of the apparatus by the Buyer, the Buyer agrees to provide all liability and physical damage insurance. It is further agreed that if on delivery and testing, any defects should develop, the Company shall be given reasonable time to correct changes. Guarantee of the chassis is subject to the guarantee of the chassis manufacturer. *NOTE: upon final inspection at the factory for pick-up or delivery, the Buyer will need to supply a Certificate of Insurance and full payment prior to release of the vehicle, unless prior arrangements for vehicle's release have been made.

TITLE: The Apparatus shall always be the property of the Company until it is delivered to the Buyer pursuant to the terms of this agreement. The Company shall bear the sole responsibility and risk for destruction, loss or damage to the apparatus, or any portion of the Apparatus, through the date and time it is delivered to the Buyer. The Company shall deliver good and merchantable title to the Apparatus at the time it is delivered to the Buyer. The Buyer shall bear the sole responsibility and risk for destruction, loss or damage to the Apparatus upon the date and time it takes delivery of the Apparatus.

www.rosenbaueramerica.com

info@rosenbaueramerica.com

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P: 605.543.5591

ROSENBAUER MINNESOTA, LLC.
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P.O. BOX 549
WYOMING, MINNESOTA 55092
P: 651.482.1000

ROSENBAUER MOTORS, LLC.
5190 260TH STREET
P.O. BOX 549
WYOMING, MINNESOTA 55092
P: 651.482.1000

ROSENBAUER AERIALS, LLC.
870 SOUTH BROAD STREET
FREMONT, NEBRASKA 68025
P: 402.721.7622

PIGGY BACK ORDERS: The Company, at its sole discretion, will allow the terms of the contract to be extended to both the Buyer, as well as to other Municipal, State, or Federal agencies for similar unit(s). The Company will allow tag on / additional orders for up to three (3) years from the date of contract execution. To facilitate pricing, the Company will quote the original price plus manufacturer's price increases or Producer's Price Index (PPI) whichever is greater as it applies to either Fire Apparatus and/ or commercial heavy truck industries.

MISCELLANEOUS PROVISIONS: This agreement shall be construed in accordance with the laws of the State of Minnesota. The parties agree that any litigation arising from or in connection with any dispute between the parties under this agreement shall be venue in Minnesota. The parties agree that this agreement bears a rational relationship to the State of Minnesota, and they consent to the personal jurisdiction of such state and further consent and stipulate to venue in the above-described court.

Respectfully submitted,

DEALER: DUANE KANN

BUYER:

We accept the above proposal and enter into contract with signature below.

_____ Title _____

_____ Title _____

_____ Date _____

After company receipt of this document signed by the Buyer, the document will be reviewed and upon approval, countersigned by the Company thereby putting the document in force.

ROSENBAUER MINNESOTA, LLC



Christian Kleebauer - CEO

Date:

APPENDIX C CHANGE ORDER POLICY

This change order policy is intended to reflect the increased cost of changes which result in delayed deliveries, confused paperwork, poor production flow and increased potential of trucks being built to incorrect specifications. With your cooperation, changes can be kept to a minimum which means we will be able to reduce lead times, increase production and maintain costs which will benefit all of us.

Our objective is accurate, high quality and on-time deliveries exceeding our customer expectations.

Changes any time after the order is received may delay the quoted delivery date. Significant design or component changes will have the largest impact on the schedule and quoted delivery date. Changes that occur later in the process will also have the largest impact on the schedule and quoted delivery date.

All time fences are reference to contract execution date if not otherwise stated.

Change Window #1

All changes will be priced at standard pricing and specials will be priced through our normal process. Significant changes made to the vehicle during this time period may result in a delivery extension.

RBM Chassis	0-60 days
RBA Aerial	0-60 days
Rosenbauer Body	0-60 days

Change Window #2

All changes are subject to a 25% mark-up, as well as a \$250.00 change order processing fee. All changes are subject to factory review and may be denied due to engineering or lead time issues.

RBM Chassis	61-75 days
RBA Aerial	61-75 days
Rosenbauer Body	61-120 days

Change Window #3

All changes are subject to a 50% mark-up, and 50% restocking fee on deleted items, as well as a \$250.00 change order processing fee. All changes are subject to factory review and may be denied due to engineering or lead time issues. No major components can be changed at this time; major components are considered engine, transmission, axles, suspension, cab, frame (wheelbase), seats, water pump and water tank.

RBM Chassis	76-120 days
RBA Aerial	76-120 days
Rosenbauer Body	121-180 days

Change Window #4

Changes are not recommended at this time. Any changes requested will be priced on a time and material basis, as well as a \$500.00 change order processing fee. Any changes requested, and that are quoted to the customer, must be approved by the customer within three days or they will not be valid.

RBM Chassis	After 120 days
RBA Aerial	After 120 days
Rosenbauer Body	After 180 days

**Note: Any late change orders that are factory driven will be done at cost and no additional mark up or penalties will apply.*

Initials _____

www.rosenbaueramerica.com

info@rosenbaueramerica.com

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P: 402.721.7622

Panther 6x6

Aircraft Rescue and Firefighting (ARFF) Vehicle

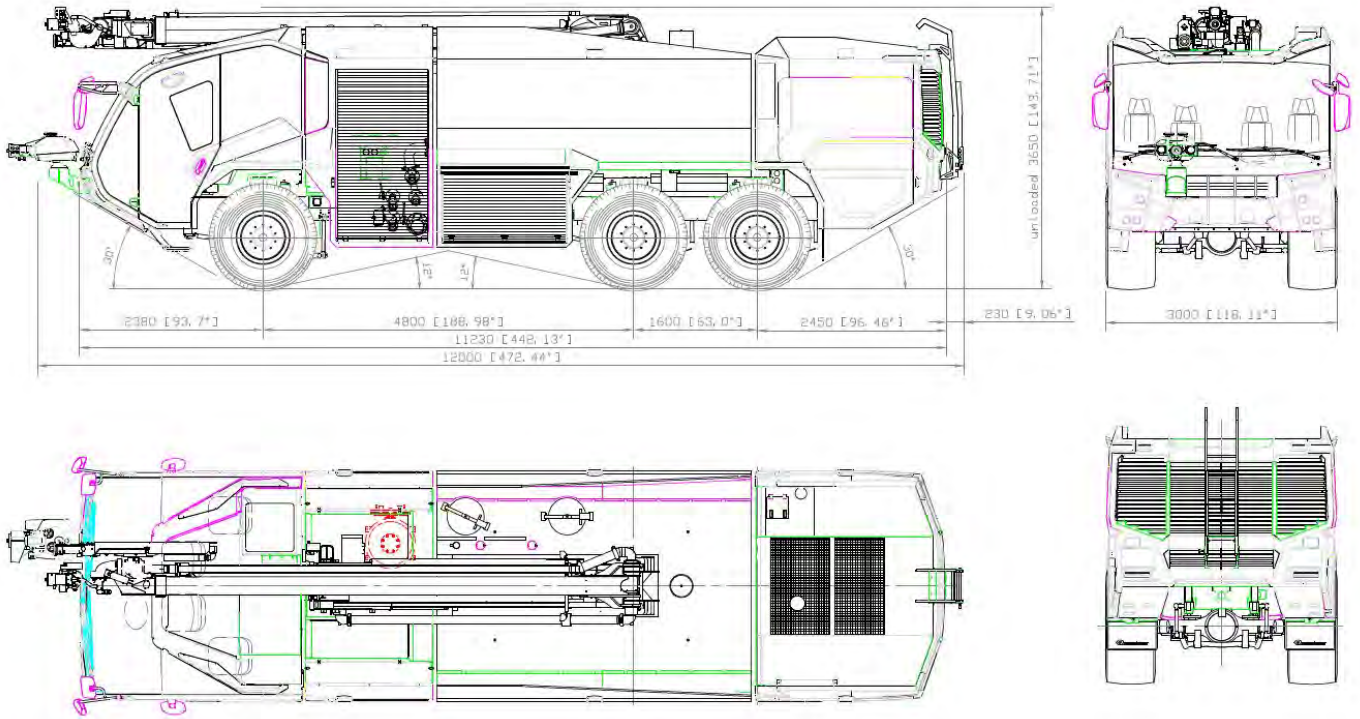


Chassis & Cab

- Tubular chassis frame rails
- Volvo 700 HP D6 Industrial engine
- Twin Disc 6 speed electronic transmission
- High performance coil spring suspension (HPCS)
- Differential locks for front and rear axles
- Top speed approx. 70 mph (fully loaded)
- Acceleration 0-50 mph/35 sec (fully loaded)
- On board battery charger
- Monitoring and Data Acquisition System (MADAS)
- 105 cubic ft of windshield visibility
- Seating for up to 6 personnel
- Flip up center console
- Flip up dashboard camera monitors

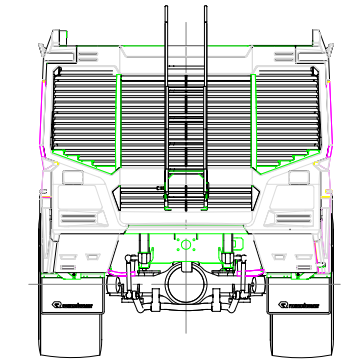
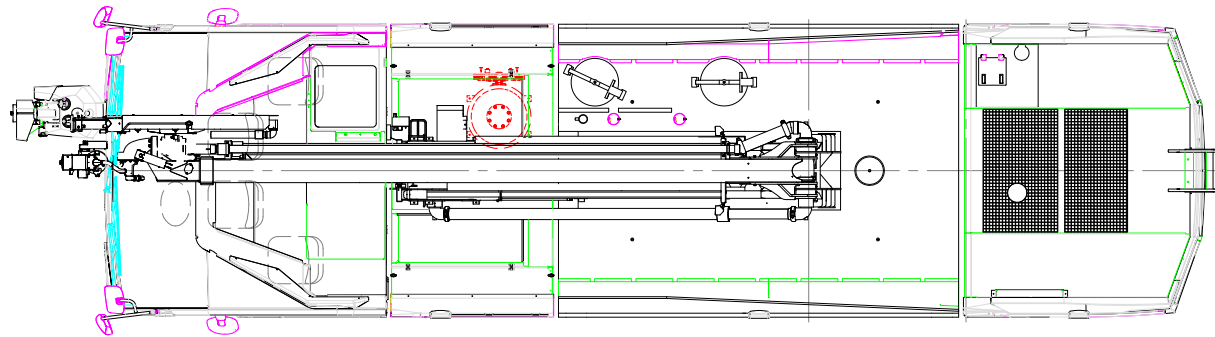
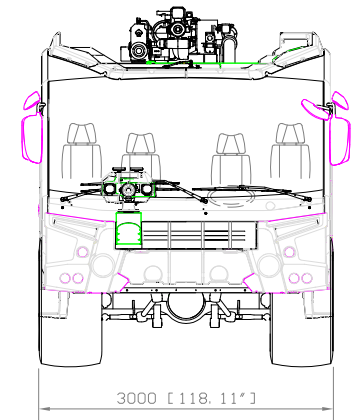
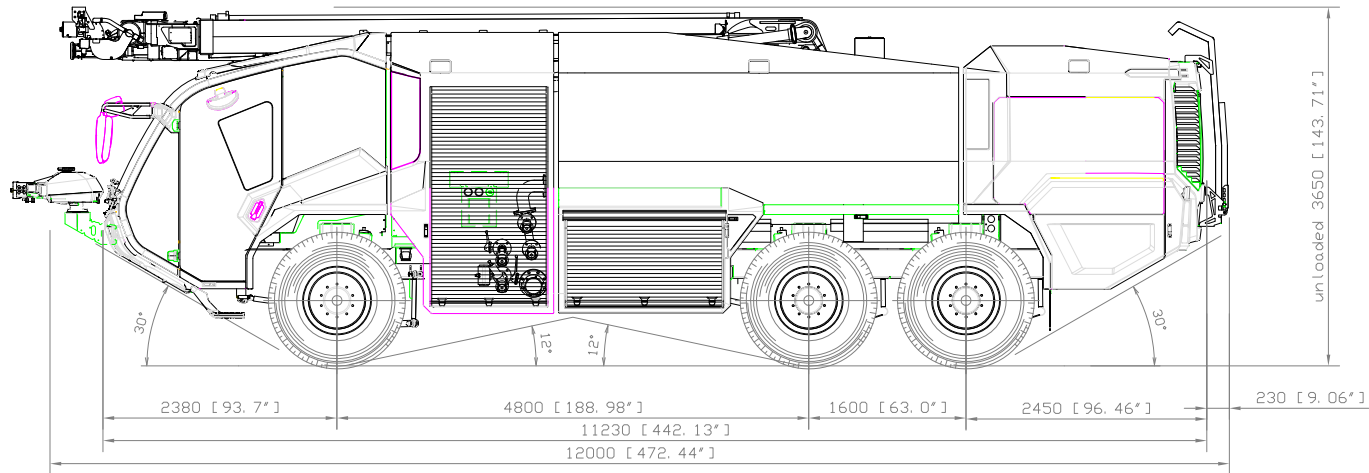
Body & Firefighting System

- 3170 gallon water tank (3000 gallon HRET)
- 400 gallon foam tank
- Rosenbauer N80 2100 GPM pump
- Rosenbauer RM35 turret including hydrochem
- Single or twin agent booster reel
- Two (2) 1 3/4" pre-connect handlines
- Windshield deluge system
- 500 lb. Dry Chemical or Halotron system
- LED integrated warning lights
- Full firefighting structural panel
- Automatic foam selection of 1% thru 9%
- Weight of 80,000 lbs (full agent and equipment)
- Onboard generator systems



Some Available Options

- 54' High Reach Extendible Turret (HRET)
- Stinger hydraulic piercing system
- High Volume Low Attack (HVLA) bumper turret
- Compressed Air Foam System (CAFS)
- High pressure water pump
- Bronze pump
- Internal foam testing system
- Under truck nozzles
- Swing out agent hose reels
- Driver Enhanced Vision Systems (EMEREC)
- Forward Looking Infra Red (FLIR) camera
- Rear steer system (electric over hydraulic)
- Multiple winterization systems
- Remote engine start
- Central lubrication system
- Disc brakes
- Door arrester system
- Electric and tinted windows
- Hydraulic generator 6KW to 15KW
- Command light tower
- Safe to approach lights
- Airfield driving lights
- Exterior water and foam lights
- Multiple scene lighting configurations
- 360 degree camera system
- Color camera and recording system
- Electric 200' cord reel
- Auxiliary air compressor
- Pneumatic 200' hose reel
- Tire pressure monitoring system
- Tire bead locks
- Cab storage cabinets
- Roof top ladder gantry
- Rear ladder mounting system
- Various slide out shelves and trays
- Simulator systems



CHASSIS 87,524 LBS. GVWR 6x6
 CREW up to 1 + 5
 TANK CAPACITY WATER up to 3,000 GAL.
 TANK CAPACITY FOAM up to 400 GAL.
 PUMP UNIT N80 + FIXMIX 2.0

HRET STINGER 54'
 MONITOR RM 65 + RM 35
 DRY CHEMICAL UNIT 500 LBS.
 TIRES 24 R 21

ROSENBAUER MN
 5181 260TH ST.
 WYOMING, MN 55092



DIESE ZEICHNUNG KANN ZUSATZAUSRÜSTUNGEN ENTHALTEN, DIE NICHT IM PREIS INBEGRIFFEN SIND.
 FANHOZIG BELASTET GEZEICHNET. ALLE BELASTUNGSABHÄNGIGE MASSE KÖNNEN AUFGRUND DER TOLERANZEN DER FAHRGESTELLHERSTELLER UM ±40% ABWEICHEN.

THIS DRAWING MAY SHOW OPTIONAL ACCESSORIES WHICH ARE NOT INCLUDED IN THE PRICE.
 VEHICLE IS SHOWN LOADED. DUE TO THE CHASSIS MANUFACTURER'S TOLERANCES, ALL LOAD-DEPENDENT MEASUREMENTS MAY VARY BY 40%.

DIE MIT DIESEM DOKUMENT WEITERGEGEBENEN INFORMATIONEN, DATEN UND KENNTHNISSE SIND FÜR DEN EMPFÄNGER NUR IM ZUSAMMENHANG MIT DEM FÜR DIE ZEICHNUNGSERSTELLUNG AUSBLIEBENDE GEMEINSAMEN PROJEKT MIT ROSENBAUER VERWENDET WERDEN. NACH DESSEN BEENDIGUNG VERPFLICHTET SICH DER EMPFÄNGER DIESE WEITER FÜR EIGENE NUTZ ZWECKE ZU BENUTZEN EINE WEITERGEGEBENE SCHREIBLICHE ZUSTIMMUNG DURCH ROSENBAUER IST AUSDRÜCKLICH UNTERSAGT. ALS DER KENNTHNIS DER HIERMIT ÜBERGEBENEN INFORMATIONEN UND DES KENNTHNIS SIND FÜR DEN EMPFÄNGER IM HINBLICK AUF SCHUTZRECHTSMÄßIGEN KEINE RECHTE. INSBESONDERE KEINE RECHTE AUF VORBENUTZUNG GELTEND GEMACHT WERDEN. WIR WAHREN UNSERE RECHTE!

THE RECIPIENT MAY ONLY USE THE INFORMATION, DATA AND KNOW-HOW PROVIDED IN THIS DOCUMENT IN CONNECTION WITH THE JOINT PROJECT WITH ROSENBAUER FOR WHICH THIS DRAWING WAS CREATED. THE RECIPIENT UNDERTAKES NOT TO USE THE PROVIDED INFORMATION FOR ITS OWN PURPOSES OR FOR THIRD PARTIES. THE DISCLOSURE OF INFORMATION WITHOUT ROSENBAUER'S PRIOR WRITTEN CONSENT IS PROHIBITED. IN VIEW OF INTELLECTUAL PROPERTY THE RECIPIENT MAY NOT DERIVE ANY RIGHTS, IN PARTICULAR NO PRIOR USE RIGHTS. ALL RIGHTS RESERVED!
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c		BEZ 2/TITLE 2	PANTHER 6x6 HRET NEW
b		ANDERUNG/REVISION	
a		DATUM/DATE	NAME
Δ		ERSATZ FÜR/EXCHANGE FOR	ZEICHNUNG NR./DRAWING NO.
GEZ DRAU GEM. DRECKE		ERSTET DURCH/CREATED BY	BLATT/SHEET
		12/05/16 JPD	P6431-01 1/1
		12/05/16 JPD	

Rosenbauer meets the FAA
5220- 10E specifications as
listed in the
Lee County Port Authority
Southwest Florida Int'l
Airport
RFP-21-46CDE ARFF Vehicle

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P: 402.721.7622

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

<p>1. REQUESTED MOTION/PURPOSE: Request Board approve a federal grant (Airport Improvement Program No. 3-12-0135-059-2021) in the amount of \$915,368 from the Federal Aviation Administration towards the acquisition of an Aircraft Rescue and Fire Fighting Crash Vehicle for the Southwest Florida International Airport.</p> <p>2. FUNDING SOURCE: N/A</p> <p>3. TERM: N/A</p> <p>4. WHAT ACTION ACCOMPLISHES: Provides \$915,368 of federal funding towards the acquisition of RSW ARFF Crash Vehicle.</p>	<p>5. CATEGORY: 33. Administrative Agenda</p> <hr/> <p>6. ASMC MEETING DATE: 10/19/2021</p> <p>7. BoPC MEETING DATE: 11/4/2021</p>
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<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>Mark Fisher</u></p> <p>DIV. <u>Development</u></p>
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10. BACKGROUND:

Port Authority staff has been working diligently with FAA in an effort to secure federal grant funding for the acquisition of an Aircraft Rescue and Fire Fighting (ARFF) Crash Vehicle for the Southwest Florida International Airport (RSW). After many months of continued coordination between the Port Authority and FAA Orlando Airports District Office (ADO) staff, an Airport Improvement Program (AIP) Grant Agreement, No. 3-12-0135-059-2021, has been secured in the amount of \$915,368 to provide 100% federal funding towards FAA eligible costs for the acquisition of the ARFF Crash Vehicle. This grant consists of RSW AIP entitlement funds in the amount of \$686,526 and American Rescue Plan Act (ARPA) local match dollars in the amount of \$228,843.

As a condition of the grant offer, the FAA required the Port Authority to accept and return the grant agreement no later than August 31, 2021. In order to secure the grant agreement, the Executive Director executed it on behalf of the Port Authority and staff requests the Board ratify this action.

Attachments:
Resolution
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>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<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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RESOLUTION AUTHORIZING, ADOPTING, APPROVING,
ACCEPTING AND RATIFYING THE EXECUTION OF
AIRPORT IMPROVEMENT PROGRAM
GRANT AGREEMENT NUMBER 3-12-0135-059-2021
BETWEEN THE UNITED STATES OF AMERICA AND
LEE COUNTY BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

BE IT RESOLVED by the Board of Port Commissioners, Lee County, Florida, that:

SECTION 1.

Said Lee County Board of Port Commissioners, Lee County, Florida, hereby authorizes, adopts, approves, accepts and ratifies the execution of Airport Improvement Program (AIP) Grant Agreement Number 3-12-0135-059-2021 between the Federal Aviation Administration on behalf of the United States of America and Lee County, Florida.

SECTION 2.

The execution of AIP Grant Agreement Number 3-12-0135-059-2021 on behalf of said Board of Port Commissioners, Lee County, Florida, is hereby authorized, adopted, approved, accepted and ratified.

SECTION 3.

The Executive Director of the Lee County Port Authority is hereby authorized to execute payment requests under this AIP Grant Agreement on behalf of said Lee County Board of Port Commissioners, Lee County, Florida.

SECTION 4.

The Grant Agreement referred to hereinabove shall be attached hereto and made a part of this Resolution as though it were fully copied herein.

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

Brian Hamman _____
Frank Mann _____
Cecil L Pendergrass _____
Kevin Ruane _____
Ray Sandelli _____

DONE AND ADOPTED by the Board of Port Commissioners this _____ day of _____, 2021.

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



U.S. Department
of Transportation
Federal Aviation
Administration

8427 Southpark Circle,
Suite 524
Orlando, FL 32819

July 26, 2021

Mr. Benjamin R. Siegel, CPA
Executive Director
Lee County Port Authority
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913-8213

Dear Mr. Siegel:

We are transmitting to you for execution the Grant Offer for Airport Improvement Program (AIP) Project No. 3-12-0135-059-2021 at Southwest Florida International Airport in Fort Myers, Florida. This letter outlines expectations for success. Please read the conditions and assurances carefully.

To properly enter into this agreement, you must do the following:

- a. The governing body must provide authority to execute the grant to the individual signing the grant; i.e. the sponsor's authorized representative.
- b. The sponsor's authorized representative must execute the grant by providing their electronic signature.
- c. Once the sponsor's authorized representative has electronically signed the grant, the sponsor's attorney will automatically be sent via email the grant to provide their electronic signature.
- d. You may not make any modification to the text, terms or conditions of the grant offer.
- e. Following the attorney's action, the executed grant will be automatically sent to all parties as an attachment to an email.

Subject to the requirements in 2 CFR §200.305, each payment request for reimbursement under this grant must be made electronically via the Delphi invoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

The terms and conditions of this agreement require you to complete the project without undue delay. We will be monitoring your progress to ensure proper stewardship of these Federal funds. **We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress.** Should you fail to make draws on a regular basis, your grant may be placed in "inactive" status, which will affect your ability to receive future grant offers.

Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- A signed/dated SF-270 (non-construction projects) or SF-271 or equivalent (construction projects) and SF-425 annually, due 90 days after the end of each federal fiscal year in which this grant is open (due December 31 of each year this grant is open); and
- Performance Reports, which are due within 30 days of the end of a reporting period as follows:
 1. Non-construction project: Due annually at end of the Federal fiscal year.


2. Construction project: Submit FAA form 5370-1, Construction Progress and Inspection Report at the end of each fiscal quarter.

As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to assure your organization will comply with applicable audit requirements and standards.

Once the project(s) is completed and all costs are determined, we ask that you close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

Mr. Vernon Rupinta, (407) 487-7228, is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein. We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,


Juan C. Brown (Jul 26, 2021 13:54 EDT)

Juan C. Brown
Acting Manager



U.S. Department
of Transportation
Federal Aviation
Administration

FAA Airport Improvement Program (AIP)

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date	July 26, 2021
Airport/Planning Area	Southwest Florida International Airport
FY2021 AIP Grant Number	3-12-0135-059-2021
Unique Entity Identifier	781566419

TO: Lee County Port Authority
(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated July 21, 2021, for a grant of Federal funds for a project at or associated with the Southwest Florida International Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Southwest Florida International Airport (herein called the "Project") consisting of the following:

"Acquire 3,000 Gallon Aircraft Rescue & Fire Fighting Vehicle (49 CFR Part 139)"

which is more fully described in the Project Application.

NOW THEREFORE, Pursuant to and for the purpose of carrying out the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2); and the representations contained in the Project Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$915,368.

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$ 0 for planning

\$ 915,368 airport development or noise program implementation; and,

\$ 0 for land acquisition.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:

- a. Period of Performance:

1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods. (2 Code of Federal Regulations (CFR) § 200.1).

- b. Budget Period:

1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the period of performance provided in Paragraph a.1. Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

- c. Close Out and Termination

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344).

2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary, and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, and the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"). Per 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project, and request prior approval from FAA. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before August 31, 2021, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.
- The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1.
- The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.
- An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.
17. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
- a. May not be increased for a planning project;
 - b. May be increased by not more than 15 percent for development projects if funds are available;
 - c. May be increased by not more than the greater of the following for a, land project, if funds are available:

1. 15 percent; or
2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in 49 U.S.C. § 47110, or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

18. Audits for Sponsors.

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

19. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
 3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
- c. Immediately disclose to the FAA whenever the Sponsor (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debar a contractor, person, or entity.

20. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

- b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
 - b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.
- 21. **Trafficking in Persons.**
 - a. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not –
 - 1. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
 - 2. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
 - 3. Use forced labor in the performance of the Grant or any subgrants under this Grant.
 - b. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –
 - 1. Is determined to have violated a prohibition in paragraph a. of this condition; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph a. of this condition through conduct that is either –
 - a. Associated with performance under this Grant; or
 - b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 49 CFR Part 29.
 - c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this condition.
 - d. Our right to terminate unilaterally that is described in paragraph a. of this condition:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant Agreement.
- 22. **AIP Funded Work Included in a PFC Application.** Within 90 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.
- 23. **Exhibit “A” Property Map.** The Exhibit “A” Property Map dated February 2011, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.
- 24. **Employee Protection from Reprisal.**

- a. Prohibition of Reprisals —
1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph a.2. below, information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or
 - v. A violation of law, rule, or regulation related to a Federal grant.
 2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
 - v. A court or grand jury;
 - vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - vii. An authorized official of the Department of Justice or other law enforcement agency.
 3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
 4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this condition more than three years after the date on which the alleged reprisal took place.
 5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
 6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).

SPECIAL CONDITIONS

25. **ARFF and SRE Equipment and Vehicles.** The Sponsor agrees that it will:
- a. House and maintain the equipment in a state of operational readiness on and for the airport;
 - b. Provide the necessary staffing and training to maintain and operate the vehicle and equipment;
 - c. Restrict the vehicle to on-airport use only;
 - d. Restrict the vehicle to the use for which it was intended; and
 - e. Amend the Airport Emergency Plan and/or Snow and Ice Control Plan to reflect the acquisition of the vehicle and equipment.


26. **Mothers' Rooms.** As a medium or large hub airport, the sponsor certifies it is in compliance with 49 U.S.C. § 47107(w).
27. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.¹

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**


Juan C. Brown (Jul 26, 2021 13:54 EDT)

(Signature)

Juan C. Brown

(Typed Name)

Acting Manager

(Title of FAA Official)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.²

Dated July 26, 2021

Lee County Port Authority

(Name of Sponsor)



Benjamin Siegel (Jul 26, 2021 14:40 EDT)

(Signature of Sponsor's Authorized Official)

By: Benjamin Siegel

(Typed Name of Sponsor's Authorized Official)

Title: Executive Director

(Title of Sponsor's Authorized Official)

² Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR’S ATTORNEY

I, Mark A. Trank, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Florida. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor’s official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State, the FAA Reauthorization Act of 2018 (Public Law Number 115-254); Title 49 U.S.C., Chapters 471 and 475; 49 U.S.C. §§ 40101, et seq., and 48103; and the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L), as further amended by the American Rescue Plan Act of 2021 (Public Law 117-2). In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.³

Dated at July 26, 2021

Mark A. Trank
By: Mark A. Trank (Jul 26, 2021 15:05 EDT)
(Signature of Sponsor’s Attorney)

ASSURANCES

AIRPORT SPONSORS

A. General.

- a. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
- b. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
- c. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act — 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 – Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 – Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.¹
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity¹
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 – Environmental Justice

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Non-procurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures
- e. 14 CFR Part 16 – Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport noise compatibility planning.
- g. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for predetermination of wage rates.¹
- j. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- k. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- m. 49 CFR Part 18 – Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- n. 49 CFR Part 20 – New restrictions on lobbying.
- o. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- p. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.

- q. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1 2}
- r. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- s. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- t. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- u. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- v. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- w. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- x. 49 CFR Part 41 – Seismic safety of Federal and federally assisted or regulated new building construction.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.
- ⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.**a. Public Agency Sponsor:**

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will 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, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or

document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United

States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It 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 Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, 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, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-
 - 1. Operating the airport's aeronautical facilities whenever required;
 - 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3. Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and

purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
 - 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor 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.

- i. The sponsor 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.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital 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 actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
 - b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor 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;
 3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
 4. all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 - 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

- c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
 - 2. So long as the sponsor retains ownership or possession of the property.
- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The Lee County Port Authority, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

- e. Required Contract Provisions.
1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
 2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
 3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
 4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
 - f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
 - g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport

development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

Engineering and Design Services. If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U. S. C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by

the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars for AIP projects as of July 21, 2021.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 1. Describes the requests;
 2. Provides an explanation as to why the requests could not be accommodated; and
 3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

View the most current versions of FAA's Advisory Circulars (A/Cs) here:

https://www.faa.gov/regulations_policies/advisory_circulars/

Airports A/Cs are found in the 150 series. In addition Airspace A/Cs, found in the 70 series, also may apply for certain projects.

BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request the Board approve a Service Provider Agreement with Chris-Tel Construction to provide On-Call General Repairs, Maintenance and Project Services (acting as general contractor) and 2) authorize the Executive Director, or designee, to approve expenditures up to \$100,000 per project, not to exceed \$1 million annually for the term of the agreement.
2. **FUNDING SOURCE:** Account WJ5422941200.503490, Other Contracted Services
3. **TERM:** Five (5) years
4. **WHAT ACTION ACCOMPLISHES:** Enters into a continuing agreement with a General Contracting firm to provide construction related services under an on-call contract.

5. **CATEGORY:** 34.
Administrative Agenda

6. **ASMC MEETING DATE:** 10/19/2021

7. **BoPC MEETING DATE:** 11/4/2021

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

9. **REQUESTOR OF INFORMATION:**

(ALL REQUESTS)

NAME Mark Fisher

DIV. Aviation

10. **BACKGROUND:**

On September 9, 2021, after a competitive selection process under RFP 21-44NJD, the Board selected Chris-Tel Construction as the top ranked firm to provide General Contracting (GC) Services for the Port Authority. Based on the Board's direction, staff has negotiated a basic service provider agreement with Chris-Tel Construction as summarized below:

- 5 year contract with no renewal options.
- Only projects with an estimated value under \$300,000 for construction and \$75,000 for electrical apply to this contract.
- Assigned projects not to exceed \$100,000 each and \$1 million annually without prior Board approval.
- All projects are contingent on the availability of funds and the issuance of an executed Work Authorization. Only work authorized and completed can be billed and paid to the GC.
- GC is required to seek competitive pricing/bids for all construction work, with the lowest responsive sub-trade bids awarded as subcontractors to the GC.
- GC fees to be negotiated for each project pursuant to the contract based on personnel assigned to each project, individual hourly rates, and direct/ indirect expenses.
- A W/MBE participation goal of 7% has been set for the term of this contract.

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>Dave W. Amdor</i>	<i>Mark A. Crank</i>	<i>Benjamin R. Siegel</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)

There is no work or fees associated with the agreement at this time.

Attachment:
Chris-Tel Construction Service Provider Agreement

Contract Number _____
Vendor Number _____

SERVICE PROVIDER AGREEMENT

**ON-CALL GENERAL REPAIRS, MAINTENANCE, and PROJECT SERVICES
(ACTING AS GENERAL CONTRACTOR) FOR THE
LEE COUNTY PORT AUTHORITY**

RFP 21-44NJD

THIS AGREEMENT is entered this _____ day of _____, 2021, between the LEE COUNTY PORT AUTHORITY (Authority), a political subdivision of the State of Florida ("Authority") located at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and CHRIS-TEL COMPANY OF SOUTHWEST FLORIDA, INC. d/b/a CHRIS-TEL CONSTRUCTION, a Florida Corporation, authorized to do business in the State of Florida, and having a business address of 2534-A Edison Avenue, Fort Myers, Florida 33901, Federal Identification Number 65-0384539 (GC).

WITNESSETH:

WHEREAS, Authority desires to obtain the On-Call General Repair, Maintenance and Project Services for various smaller airport construction projects at the Southwest Florida International Airport and Page Field General Aviation Airport in Fort Myers, Florida; and

WHEREAS, GC 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 Board or Government Agencies responsible for regulating and licensing the services to be provided under this Agreement and a response to a Request for

Proposals to provide those services and represents that it has expertise in the type of services required; and

WHEREAS, Authority has conducted a competitive selection process, Request for Proposal RFP21-44NJD, under the Authority's Purchasing Policy to obtain the services described above; and on September 9, 2021, the Board of Port Commissioners selected GC to provide those services subject to the negotiation, approval and execution of a written agreement between the parties; and

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. GC will provide On-Call 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 General Contractor for various tasks and projects and providing the customary services associated therewith.

2.2. GC has represented to Authority that it has expertise in the type of services that will be required by the Scope of Services. GC agrees that all services provided by GC under this Agreement will be subject to Authority's review and approval and will be performed according to the normal and customary standards of professional practice for

firms with special expertise in the type of 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 GC becomes aware of any conflicts in these requirements, GC must notify Authority of the conflict in writing and utilize its best professional judgment to resolve the conflict.

2.3 All services furnished under this agreement will be in accordance with section 255.20, Florida Statutes, as may be amended, renumbered, or revised, whereby no individual On-Call task or project may exceed the amounts provided for in F.S. 255.20, currently limited to tasks or projects which are estimated to cost no more than \$300,000; or, for electrical work, any tasks or projects which are estimated to cost no more than \$75,000.

ARTICLE 3 - GENERAL CONDITIONS FOR CONSTRUCTION SERVICES

GC and the Authority have negotiated General Conditions for the performance of construction management and general contracting services under this Agreement. These General Conditions are attached hereto and incorporated by reference as Schedule "B". 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 Work Authorization or 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 five (5) years from that date (the "Expiration Date") or the date GC

completes, and Authority accepts, any work assigned by a Work Authorization issued before the expiration date, whichever occurs last. If a Work Authorization is issued that will require work to continue beyond the Expiration Date, the Work may not extend the term of this Agreement for more than six (6) months from the Expiration Date.

ARTICLE 5 - GC'S RESPONSIBILITIES

GC will:

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 services provided by GC under this Agreement.

5.2. Employ and use only qualified personnel to perform services that, under Florida law, require a license, certificate of authorization or other form of legal entitlement to practice such services will.

5.3. Employ and designate a qualified professional to serve as GC's project manager ("Project Manager"). GC will designate its Project Manager in writing within five (5) calendar days after receiving an executed copy of this Agreement. GC's Project Manager designation will be executed by an authorized officer of GC, and will acknowledge that the Project Manager must be specifically authorized and responsible to act on behalf of GC with respect to directing, coordinating and administering all aspects of the services provided under this Agreement. The 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 GC's Project Manager is subject to the prior approval and acceptance of Authority. 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 GC, including any subconsultant or subcontractor, or any personnel of any subconsultant or subcontractor engaged by 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 GC. The GC will, 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 GC, will in any way relieve GC of responsibility for the adequacy, completeness and accuracy of its services, or the quality of the work and materials provided by GC. Neither the Authority's review, approval or acceptance of, nor payment for, any part of the GC's services, work or materials will 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 the Authority, maintain for the duration of this Agreement a local office in Southwest Florida staffed full-time by GC's Project Manager. The local office must be GC's main place of business, or an independent branch office of 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. GC will devote particular attention to complying with Federal Aviation Administration regulations, requirements and Advisory Circulars.

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, 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. 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. Provide the Authority with Rough Order of Magnitude Estimates (ROM estimates) and cost proposals at no cost to the Authority unless, due to scope of work, prior written approval by the Authority is obtained.

6.2. If the GC is required to prepare preliminary or detailed estimates of probable construction cost for any project or portion of a project, GC will insure that all estimates represent GC's best judgment as a professional familiar with the construction industry.

6.3. When preparing and submitting cost estimates to the Authority, the GC, by exercise of its experience, effort, knowledge and judgment, will develop cost estimates as are set forth in, or as may be required under this Agreement and will be held accountable for the accuracy, completeness, and correctness of any and all cost estimates.

6.4. 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. 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 GC.

If, in response to a solicitation, the 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 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 GC may recommend the Authority reject any such bid(s) or price proposal(s).

ARTICLE 7 - ADDITIONAL SERVICES OF 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 GC's control and fault.

7.2. 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).

7.3. Additional services rendered by GC in connection with any assignment, not otherwise provided for in this Agreement or not customarily furnished in accordance with generally accepted General Contractor services practice.

Any additional services may be authorized only by a Work Authorization 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 Work Authorization will 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 will:

8.1. Designate in writing a Project Manager to act as Authority's representative with respect to the issuance of Work Authorizations for services rendered under this

Agreement (“Authority Project Manager”). The Authority Project Manager, Executive Director, Deputy Executive Director - Aviation or the Aviation Division Director will have authority to execute Contract Amendments, Work Authorizations, and any modifications or changes to 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 Work Authorization, subject to approval level authority as established by Airport policies and procedures.. The Authority Project Manager will have authority to transmit instructions, receive information, and interpret and define Authority’s policies and decisions with respect to GC’s services under this Agreement. The Authority Project Manager will review and make appropriate recommendations on all requests submitted by GC for payment for services.

8.2. The Authority Project Manager is not authorized to, and will not, issue any verbal orders or instructions to 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 GC hereunder; (2) the time GC is obligated to commence and complete all such services; or (3) the compensation Authority is obligated or committed to pay GC.

8.3. Provide all criteria and information requested by 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 GC, upon request, all available information in Authority’s possession pertinent to any Work Authorization, including existing drawings,

specifications, shop drawings, product literature, previous reports and any other data concerning design or construction of a project, subject to any limitations or restrictions established by the Florida Public Records Act or other applicable law.

8.5. Arrange access, in accord with Authority's security regulations, for GC to enter any Project site to perform services. GC acknowledges that Authority may provide such access during times that are not the GC's normal business hours.

8.6. Notify GC of any defects or deficiencies in services rendered by GC.

ARTICLE 9 - WORK AUTHORIZATIONS AND TIME FOR COMPLETION OF SERVICES

9.1. GC will not commence work under this Agreement until it receives a written Work Authorization. All Work Authorizations must be executed pursuant to the Lee County Port Authority Purchasing Policy, as approved and put into effect by the Authority's Board of Port Commissioners; contain GC signatures and be accompanied by back up documentation.

9.2. All tasks outlined in the Agreement are contingent upon execution of a Work 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 Work Authorization is the expenditure of funds authorized and committed. 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 Work Authorization is executed by both parties. Tasks may be authorized in whole or in part.

9.3. If GC is obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of 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, pandemics, epidemics, quarantine regulations, strikes or lock-outs, then GC will 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 GC may have had to request a time extension.

9.4. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of GC's services from any cause whatsoever, will relieve GC of its duty to perform services or give rise to any right to damages or additional compensation from Authority. 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 GC may request, and Authority may approve, subject to Authority's sole discretion, reimbursement of GC's direct costs strictly related to the applicable Task and resulting from such interruption, interference, inefficiency, suspension or delay. This paragraph will expressly apply to claims for early completion, as well as claims based on late completion.

9.5. If 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 GC until such time as GC resumes

performance of its obligations in such a manner so as to establish to Authority's satisfaction that GC's performance is or will shortly be back on schedule.

ARTICLE 10 - COMPENSATION AND METHOD OF PAYMENT

10.1. Authority will pay GC for all authorized and completed services provided by GC under this Agreement and as set forth in the individual Work Authorizations executed by the parties, based on the Fee Schedule set out in Schedule "C", "Basis of Compensation," which is attached hereto and incorporated by reference. GC will be compensated on either a lump-sum basis on completion of a particular Task or over the course of GC's services for Work in Progress, based on a monthly statement of services as follows:

(1) Lump Sum - Upon completion of all work performed on a particular project or task and upon Authority's acceptance of GCs' work, Authority will pay GC a lump sum as specified in the Work 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 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 GC as may be required or necessary to complete each and every task set forth in the Scope of Services, or as may be set out in subsequent Work 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 GC's services are suspended prior to completion of a Task or Project, GC will 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 - GC may submit an invoice statement each calendar month covering services rendered and completed during the preceding calendar month. GC's invoice(s) statement must be itemized to correspond to the basis of compensation as set forth in the Work Authorization, expressed as a percentage of the total work completed and to be performed under that Work Authorization.

Authority will review each Monthly Invoice Statement to determine whether the requested GC Fees accurately account for the work completed to date and 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 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 GC's compensation for performing services required in the Scope of Services or Work 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 will be made on the following basis:

a. For the actual hours required and expended by the GC's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Schedule "C" 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 "C-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 GC for all costs and expenses within the established Not-to-Exceed amount for each Task or Sub-Task, subject to the 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 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 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 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) will 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 GC within the time frame set by Section 218.735, F.S. after receipt of either a lump-sum invoice or a monthly invoice for work in progress 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 GC invoice, Authority will notify 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 will withhold the disputed amount and make payment to 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 GC to follow the instructions set out above will 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 will compensate the 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 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 GC's services or work on all or part of the services required by this Agreement, the Authority will compensate the 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 GC will 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.

ARTICLE 11 - FAILURE TO PERFORM

If 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 GC, not to exceed the amount of the compensation for the work in dispute, until the 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

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.

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 - 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.

Sections 119.071(3)(a)1. and 2., Florida Statutes, reiterate the security system exemption and expand 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.

GC agrees not to disclose, 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 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 GC hereunder. GC will 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 GC is "acting on behalf" of Authority in providing services under this Agreement, GC 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 GC 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 GC 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 GC under this Agreement will be delivered to and become the property of Authority. GC may retain copies thereof for files and internal use.

ARTICLE 15 - MAINTENANCE OF RECORDS

GC will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by 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 will 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 will be conducted only during normal business hours.

ARTICLE 16 - INDEMNIFICATION

16.1. GC will 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 GC, or anyone employed or utilized by 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.

ARTICLE 17 - INSURANCE

During the term of this Agreement, GC will 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 GC must obtain the insurance coverages and limits as set out below. All insurance will 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 will contain provisions that advance written notice will 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, GC will 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 GC's insurance coverages will be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and will include waiver of subrogation in favor of Authority.

No work will 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, GC will procure and maintain insurance of the types and to the limits specified in paragraphs 17.2.1 through 17.2.3, inclusive below. All liability insurance policies obtained by GC to meet the requirements of this Agreement, other than Worker's Compensation and Employer's Liability and Professional Liability policies, will name Authority as an additional insured as to the operations of GC under the Contract Documents and will 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 will conform to the following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

17.2.1. Commercial General Liability Insurance - GC will maintain commercial general liability insurance. Coverage will 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 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 will not be less than the following for Bodily Injury, Property Damage and Personal Injury Combined Single Limits:

General Aggregate	\$1,000,000.00
Products - Completed Operations Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$1,000,000.00
Each Occurrence Combined Single Limit	\$1,000,000.00

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 will 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 will be no later than the commencement date of any Task under this Agreement and will provide that in the event of cancellation or non-renewal the discovery period for insurance claims (Tail Coverage) will be unlimited.

17.2.2. Automobile Liability Insurance will be maintained by 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 \$5,000,000.00 Combined Single Limit.

For both Commercial General Liability and Automobile Liability Insurance, the required limits may be met using a combination of the underlying policies and the excess liability policy.

17.2.3. Worker's Compensation and Employers Liability Insurance will be maintained by 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 will not be less than:

Worker's Compensation	Florida Statutory Requirements
Employer's Liability	

Each Accident	\$1,000,000.00
Disease Policy Limit	\$1,000,000.00
Disease Each Employee	\$1,000,000.00

17.2.4. Certificates of Insurance 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 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 will 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.

17.2.5. Subcontractor Coverage - GC is responsible to ensure GC's subcontractors are adequately insured prior to commencement of any onsite work by the subcontractor. The Authority may require, and the GC must produce, certificates of insurance of its subcontractors upon the Authority's request.

17.2.6. Failure to Maintain Insurance Coverage - If 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 GC for the coverages purchased. Authority will be under no obligation to purchase insurance, nor

will it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase insurance coverages will in no way be construed to be a waiver of its rights under this Agreement.

ARTICLE 18 - WAIVER OF CLAIMS

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 GC as unsettled at the time of the final payment. Neither the acceptance of GC's services nor payment by Authority will be deemed to be a waiver of any of Authority's rights against GC.

ARTICLE 19 - AIRPORT SECURITY REQUIREMENTS

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. GC may need access to these secure areas to complete the work required by this Agreement.

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 GC, its employees, agents, subcontractors, or invitees.

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 GC, GC will notify the Airport's Police Department that the GC's access authorization or that of any of GC's employees, agents, subcontractors, or invitees has changed. 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 GC, GC will surrender any Airport Security Identification Badge held by the GC or by GC's employees, agents, subcontractors, or invitees. Should GC fail to surrender these items within five (5) days, the GC will be assessed a fee of One Hundred Dollars (\$100.00) per identification badge not returned. This fee will be billed to the GC or deducted from any money owing to the GC, at the Authority's discretion. GC acknowledges and agrees that this fee is subject to change during the term of this Agreement, at the Authority's sole discretion.

ARTICLE 20 - PAYMENT AND PERFORMANCE GUARANTIES

During the term of this Agreement GC will maintain payment and performance bonding capacity sufficient to bond not less than one hundred percent (100%) of the aggregate workload assigned to GC at any given time by outstanding Work

Authorizations. Such bonding capacity must be maintained without contingencies requiring bonding of subcontractors.

Bonding requirements for specific Tasks will be set by Authority on a Task-by-Task basis. Unless specifically waived in writing by the Authority pursuant to Florida Law, 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 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 21 - TERMINATION OR SUSPENSION

21.1. GC will 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 Work, 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 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 GC seven (7) calendar days written notice.

21.2. If, after notice of termination of this Agreement, it is determined for any reason that GC was not in default, or that its default was excusable, or that Authority was

not entitled to the remedies against GC provided herein, then GC's remedies against Authority will be the same as and limited to those afforded GC under paragraph 22.3. below.

21.3. Authority will have the right to terminate this Agreement, in whole or in part, without cause upon thirty (30) calendar days written notice to GC. In the event of such termination for convenience, GC's recovery against Authority will 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 GC that are directly attributable to the termination, but GC will 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.

21.4. Upon termination, GC will deliver to Authority all original papers, records, documents, drawings, models, and other materials set forth and described in this Agreement.

21.5. Authority will have the power to suspend all or any portions of the services to be provided by GC hereunder upon giving 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, GC's sole and exclusive remedy will be an extension of time to its schedule.

ARTICLE 22 - 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 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 23 - SECURING AGREEMENT

GC warrants that GC has not employed or retained any company or person, other than a bona fide employee working solely for GC, to solicit or secure this Agreement and that GC has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for GC, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

GC will sign the Truth-In-Negotiation Certificate attached hereto and made a part hereof as Schedule "D". The original Agreement price and any additions thereto will 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 24 - CONFLICT OF INTEREST

24.1. - Conflict of Interest - Clients - The Authority desires to avoid any real or perceived conflict of interest in obtaining GC's services during the term of this Agreement. 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 during the term of this Agreement, including any extensions.

GC represents that it presently has no interest and will 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. GC further agrees that

no person having any such interest will be employed or engaged by GC for said performance.

If 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 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 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, GC or such subcontractor will 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 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 GC or a subcontractor under this Agreement, then GC or such subcontractor agrees to promptly terminate the representation. GC will require each of its subcontractors to comply with the provisions of this Article.

If GC fails to advise or notify Authority as provided hereinabove of representation which could, or does, result in a conflict of interest, or if GC fails to discontinue such representation when requested, Authority may consider such failure as justifiable cause to terminate this Agreement.

24.2. Conflict of Interest - Projects - If 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 \$4 million) the 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 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, 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 25 - NOTICES AND ADDRESS OF RECORD

25.1. All notices required or made under this Agreement to be given by either party to the other will be in writing and will be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

Executive Director
Lee County Port Authority
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

ATTENTION: Steven Hennigan, Deputy Executive Director - Aviation

Chris-Tel Company of SW Florida, Inc.
d/b/a Chris-Tel Construction
2534-A Edison Avenue
Fort Myers, FL 33901

ATTENTION: Howard Wheeler, President

25.2. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE 26 - NO THIRD PARTY RIGHTS

Nothing contained in this Agreement will 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 GC.

Services performed by GC under the Agreement are solely for the benefit of the Authority. This Agreement will not be construed to create any contractual relationship between 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 GC and Authority the right to observe work being performed by those third parties, will not give rise to any duty or responsibility on the part of GC in favor of such third parties.

ARTICLE 27 - MISCELLANEOUS

27.1. GC, in representing Authority, will promote the best interest of Authority and assume towards Authority a fiduciary relationship of the highest trust, confidence, and fair dealing.

27.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof will impair the rights or liabilities of either party.

27.3. This Agreement is not assignable, in whole or in part, by GC without the prior written consent of Authority.

27.4. Waiver by either party or a breach of any provision of this Agreement will not be deemed to be a waiver of any other breach and will not be construed to be a modification of the terms of this Agreement.

27.5. The headings of the Articles, Sections, Schedules and Attachments as contained in this Agreement are for the purpose of convenience only and will not be deemed to expand, limit or change the provisions in such Articles, Sections, Schedules or Attachments.

27.6. This Agreement, including any Addenda and referenced Schedules and Attachments hereto, constitutes the entire agreement between the parties and will 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 will have no force or effect whatever on this Agreement.

ARTICLE 28 - NOTICE REGARDING PUBLIC ENTITY CRIMES

Section 287.133(3)(a) requires Authority to notify GC of the provisions of section 287.133(2)(a) F.S., and to inform GC that:

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 29 - APPLICABLE LAW

Unless otherwise specified, this Agreement will 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. Exclusive venue for any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement will be in the Circuit Court of Lee County, Florida. The prevailing party in any suit or action will be entitled to recover from the other party their reasonable attorneys' fees and court costs, including any appellate proceedings.

ARTICLE 30 - PROHIBITED INTERESTS

No member, officer or employee of the Port Authority or of the locality during his tenure or for one year thereafter will have any interest, direct or indirect, in this contract or the proceeds thereof.

ARTICLE 31 - LOBBYING CERTIFICATION

The Port Authority agrees that no federally 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 federally 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 will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Port Authority will 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 will certify and disclose accordingly.

ARTICLE 32 - E-VERIFY

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 GC further agrees to provide the Authority with proof of enrollment within thirty (30) days of the date of this Agreement. Once enrolled, GC agrees to use the E-Verify Program to confirm the employment eligibility of:

32.1. All persons employed by GC during the term of this Agreement.

32.2. All persons, including subcontractors, assigned by the GC to perform work or provide services under this Agreement.

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.

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 33 - COVENANTS AGAINST DISCRIMINATION

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

33.1. Compliance with Regulations. GC will 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.

33.2. 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 will 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 GC, including procurements of materials and leases of equipment.

The 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.

33.3 General Civil Rights Clause. The GC agrees to comply with pertinent statute, Executive Orders and such rules as are promulgated to ensure that no person will, 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 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.

33.4. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by GC 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 GC of GC’s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

33.5. Information and Reports. GC will provide all information and reports required by the Regulations or 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 Authority or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of GC is in the exclusive possession of another who fails or refuses to furnish this information, GC will so certify to Authority or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

33.6. Sanctions for Noncompliance. In the event of GC's noncompliance with the nondiscrimination provisions of this Agreement, Authority will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to GC under the Agreement until GC complies; and/or
- (b) cancellation, termination, or suspension of the Agreement, in whole or in part.

33.7. 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 will 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 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, GC will 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.

33.8. 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:

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 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.

33.9. Incorporation of Provisions. GC will include the provisions of paragraphs 33.1. through 33.8. in every subcontract, including procurements of materials and leases of equipment, unless exempted by the Regulations or directives issued pursuant thereto. GC will 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 GC becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, GC may request Authority to enter into such litigation to protect the interests of Authority and, in addition, GC may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 34 - 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 35 - 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 36 – AIRPORT IMPROVEMENT PROGRAM (AIP) PROJECTS – FAA

REQUIRED CONTRACT PROVISIONS

Certain services required under this Agreement may encompass projects that are FAA funded by Airport Improvement Program (AIP) grants. Where such grant funding

requires the use of specific FAA contract language as a condition of the grant, that contract language will be incorporated into the Work Authorization attributable to that project, as appropriate.

ARTICLE 37 - AMENDMENTS OR MODIFICATIONS

No amendment or modification to this Agreement will 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.

Acceptance of this Agreement will be indicated by the signatures of the duly authorized representatives of the parties in the space provided.

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

ATTEST:

(Witness)

(Witness)

ATTEST: CLERK OF COURTS
LINDA DOGGETT

By: _____
Deputy Clerk

GC: CHRIS-TEL COMPANY OF
SOUTHWEST FLORIDA, INC. d/b/a
CHRIS-TEL CONSTRUCTION

By: _____

Title: _____

Date: _____
(Corporate Seal)

Authority:
LEE COUNTY PORT AUTHORITY,
a political subdivision of the State of FL

By: _____
Chair or Vice Chair

Approved as to Form for the Reliance of
Lee County Port Authority Only:

By: _____
Port Authority Attorney's Office

SCHEDULE "A"

SCOPE OF SERVICES

The GC will provide services in conjunction with the operation, maintenance and development of the Southwest Florida International Airport (RSW) and Page Field in Lee County, Florida.

The GC will serve as an extension of staff for a variety of small and medium size construction related projects and on-call repairs. All services provided under this Agreement will be pursuant to Chapter 255.20 Florida Statutes, as amended, whereby estimated construction costs for each individual project or task does not exceed \$300,000 and \$75,000 for electrical tasks and projects. All work authorized under this Agreement is subject to the following conditions:

- Authority will meet with the GC to outline the work requested to be performed, including hours of work limitations, project completion deadlines, etc., and the GC will provide the Authority with a written cost estimate to perform the work, which will include the project scope, duration and any project assumptions that affect the cost estimate. This estimate will be prepared at no cost to the Authority.
- The Authority will provide the GC with written authorization to proceed with bidding the project, including any changes to scope, duration or assumptions made during the preparation of the cost estimate.
- Based on the written authorization to proceed with bidding, the 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.
- The GC must follow FS 255 during the competitive bidding process (ie, written quotes vs sealed bids, public openings, bid protest process, etc.) and must document to the Authority all bid results.
- After competitive bidding is complete, a final project cost will be submitted to the Authority in writing. After review, the Authority will 1) submit to the GC a written Work Authorization to begin the project; or 2) the Authority will notify the GC in writing that no Work Authorization will be forthcoming at this time. If the Authority elects not to pursue the project, the GC will be reimbursed costs incurred to competitively bid the project as agreed to by the Authority and GC.

- GC will submit invoices monthly for work successfully completed and accepted by the Authority. Only work completed to the satisfaction of the Authority will be paid to the GC after the work is completed. There will be no advance payments.

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 GC will be responsible for all scheduling and coordination and will generally be responsible for the successful, timely and economical completion of requested projects. Services to be provided are outlined below:

- Management of various sub-consultants 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 as applicable.
 - Processing requests for information.
 - 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. W/MBE).
 - Performing constructability reviews/value engineering services.
 - Design and other engineering related 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 GC may include, but are not limited to, the following:

- Terminal Building Maintenance
- T-hangar, Hangar, and Maintenance Buildings
- Runway, Aircraft Ramp and Taxiways/Taxi lanes Repairs
- Site/Utility/Infrastructure/Storm Water Management Improvements
- Exotic Species Removal and Treatment
- Fuel Farm Modifications and Improvements
- Landscaping and Signage Enhancements
- Roadway Improvements
- Parking Lot Improvements
- Sidewalk Construction
- Cost Estimating and Budgeting
- On-Call Services may include, but are not limited to:
 - Roof Damage and Leak Repairs
 - Plumbing Damage and Leak Repairs
 - Post Storm Evaluation
- Any services needed to accomplish the development goals of the Port Authority

SCHEDULE "B"
GENERAL CONDITIONS

SCHEDULE "C"

BASIS OF COMPENSATION

<u>Field Based Personnel</u>			
GENERAL CONDITION ITEM	QUANTITY	UNIT COST	FREQUENCY
CONTRACTOR MARK-UP (%)	1	7%	Emergency Work Only
Project Manager	1	\$75.00	Hourly
Assistant Project Manager	1	\$50.00	Hourly
Senior Superintendent	1	\$75.00	Hourly
Superintendent	1	\$65.00	Hourly
Administrative Support	1	\$40.00	Hourly
<i>Self-Performance Rates:</i>			
Assistant Superintendent	1	\$55.00	Hourly
Carpenter	1	\$65.00	Hourly
Labor Foreman	1	\$30.00	Hourly
Laborer	1	\$20.00	Hourly

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 will 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:

CHRIS-TEL CONSTRUCTION

By: _____

Print Name

Address

The foregoing instrument was acknowledged and executed before me by the above signed on this _____ day of _____, 2021.

NOTARY PUBLIC, State of _____

Name Printed or Stamped

Commission Expires: _____

Commission Number: _____

SCHEDULE "B"

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ARTICLE 1 - GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Service Provider Agreement between Owner and General Contractor (GC), (hereinafter referred to as the Agreement), these General Conditions, Supplementary General Conditions, Drawings, Technical Specifications, Addenda, payment and performance bonds and insurance, and Work Authorizations and Contract Amendments. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as the GC's bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms or portions of Addenda relating to bidding requirements) and other documents that may form agreements between the GC and any subcontractor or material supplier used in the Work.

1.1.2 ORDER OF PRECEDENCE

In the event of a conflict, the priority of documents will be as follows:

1. Service Provider Agreement
2. Contract Amendment
3. General Conditions
4. Supplementary General Conditions

1.1.3 THE CONTRACT

The Contract Documents form the contract for On-Call General Repair, Maintenance and Project Services. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Contract Amendment. The Contract shall not be construed to create a contractual relationship of any kind between the Owner and a subcontractor, sub-subcontractor, material supplier or between any persons or entities other than the Owner and GC.

1.1.4 CONTRACT AMENDMENTS AND WORK AUTHORIZATION

A Work Authorization is an extension of the SPA; a written authorization instructing the GC to proceed with bidding the project under the assumptions and scope of work identified during the preparation of the cost estimate; must be signed by both parties. Contract Amendment is a written modification to the Contract signed by both parties.

1.1.5 WORK AUTHORIZATION AMENDMENT

A Work Authorization Amendment is a written order by the Owner directing a change in the Work, or to expedite a change in work that is time and/or schedule sensitive.

1.1.6 THE WORK

The term "Work" means all construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the GC to fulfill the GC's obligations.

1.1.7 THE PROJECT

The Agreement has been entered between Owner and GC to obtain GC's services for the Project described in the Agreement and includes the Scope of Work under the Contract Documents, authorized through Work Authorizations by the Owner.

1.1.8 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Work referenced by a written Work Authorization, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.9 THE SPECIFICATIONS

The Specifications are that portion of the Work referenced by a written Work Authorization consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.10 OWNER

The Owner is the "Lee County Port Authority Board of Port Commissioners," also referred to in the Contract Documents as "Lee County Port Authority," or "Port Authority."

1.1.11 GENERAL CONTRACTOR

The GC is the person, authorized representative, or entity with whom the Owner has contracted and who is liable for the acceptable performance of the Work contracted and for the payment of all debts pertaining to the Work, who acts directly or through lawful agents and is responsible for administering and inspecting the Work as set forth in the Contract as well as coordinating the Work with the work of other contractors at the Project site.

1.1.12 ARCHITECT/ENGINEER (A/E)

When applicable, the Architect/Engineer ("A/E") is the person, authorized representative or entity, singular or plural, engaged by the GC or the Owner to provide architectural or engineering services relevant to the Project as the architect/engineer of record. The term "A/E" may refer to one or several parties or any of their authorized representatives. The A/E is referred to throughout the Contract Documents as if singular in number.

1.2 EXECUTION, CORRELATION AND INTENT OF CONTRACT AMENDMENTS AND WORK AUTHORIZATIONS

1.2.1 Contract Amendments and Work Authorizations shall be signed by the Owner and GC as provided in the Contract. The GC shall sign the Contract Amendment and/or Work Authorization, and return the signed Contract Amendment and/or Work Authorization to the Owner, along with all required proofs of insurance, performance and payment bonds, and Bidders List Data, if required.

1.2.2 Failure of the GC to execute the Contract Amendment and/or Work Authorization or furnish the required proofs of insurance and acceptable bonds within the specified period shall be just cause for termination of the Contract.

1.2.3 Execution of a Contract Amendment and/or Work Authorization by the GC is a representation that the GC has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated personal observations with requirements of the Contract Documents.

1.2.4 The Owner reserves the right to cancel the award of any Contract Amendment and/or Work Authorization without incurring liability to the GC at any time before a Contract Amendment and/or Work Authorization has been fully executed by all parties, approved by the Owner and an executed copy of the Contract Amendment and/or Work Authorization delivered to the GC.

1.2.5 The intent of the Contract Documents is to include all information necessary for the proper execution and completion of the Work by the GC. The Contract Documents are complimentary, and what is required by one portion or section shall be as binding as if required by all. All minor details of work that are not shown in the Contract Documents, but that are reasonably inferable as necessary for the proper completion of the Work, are incidental matters and are included within the Work. The GC shall not receive any additional compensation for performing any such incidental matters.

1.3 INTERPRETATION

1.3.1 In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.3.2 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.4 STANDARD FORMS

1.4.1 The following forms shall be utilized in the execution of the Work and will be provided by the Owner; GC forms will require prior approval by the Owner. Project forms may be modified at any time during the term of the Agreement at the discretion of the Owner.

- .1 **Work Authorization (WA).** A WA shall be utilized to formalize Work and Projects that are agreed to by the Owner and GC. A WA is a Notice to Proceed (NTP) with the Work as outline within and attached to the WA.

- .2 **Work Authorization Amendment (WAA):** A WAA shall be utilized in the absence of an agreement, in the form of a WA, to express a written order by the Owner directing a change in the work, or to expedite a change in work that is time and/or schedule sensitive.
- .3 **Notice of Noncompliance (NNC):** A NNC shall be utilized by the Owner to communicate in writing to the GC either a deficiency in the Work or other action required of the GC. The GC shall provide a written response to the Owner within the specified period of receipt of the NNC. The Owner may withhold payment from GC for those items in noncompliance until corrective action is completed.
- .4 **Application and Certificate of Payment:** GC shall submit to the Owner, the GC's Application for Payment for approval by the Owner prior to the commencement of the agreement.
- .5 **GC Warranty:** The GC Warranty will be provided as part of the final close out of the Project and is a general warranty for all workmanship and materials. Receipt of this Warranty does not preclude or replace requirements for any other special warranties that may be required by the Special Conditions or Technical Specifications for the Project. The Owner may withhold final payment until the Warranty is provided.
- .6 **Final Payment Certification and Subcontractors Final Release of Lien:** GC shall submit to the Owner, the GC's standard form for approval by the Owner prior to the commencement of the agreement.
- .7 **Final Payment Certification and GC's Final Release of Lien:** GC shall submit to the Owner, the GC's standard form for approval by the Owner prior to the commencement of the agreement.

ARTICLE 2 - OWNER

2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.1.1 The Owner shall not be responsible for furnishing surveys or other information as to the physical characteristics of or utility locations for the Project site(s). To the extent that Owner provides such information, it is understood and agreed that the Owner does not guarantee the accuracy or the completeness of the location information relating to existing utility services, facilities, or structures that may be shown on the plans or encountered in the Work. IT IS THE GC'S RESPONSIBILITY TO FIELD LOCATE ALL UNSEEN ASPECTS OF THE PROJECT, INCLUDING, BUT NOT LIMITED TO, UNDERGROUND UTILITY LINES, FAA CABLES, EXTERIOR/INTERIOR SPRINKLER LINES, EXTERIOR/INTERIOR PHONES/UTILITY OR FIBER OPTIC OR OTHER VIDEO AND DATA TRANSMISSION LINES, AND EXISTING UNDERGROUND STRUCTURES, (COLLECTIVELY REFERRED TO AS "UTILITIES") PRIOR TO BEGINNING WORK. The GC is responsible for assuring no interruption of utility service occurs by taking whatever actions and incurring whatever costs are necessary. ANY INTERRUPTION IN UTILITY SERVICE SHALL BE

IMMEDIATELY CORRECTED BY THE GC AT NO COST TO THE OWNER. IF SUCH INTERRUPTION IS NOT IMMEDIATELY CORRECTED BY THE GC, THE OWNER WILL PERFORM THE NECESSARY REPAIRS AND THE GC OR SURETY WILL PAY FOR ALL COSTS RELATED TO THESE REPAIRS. THE GC IS RESPONSIBLE FOR ALL TEMPORARY COSTS AND SERVICES DETERMINED NECESSARY BY THE OWNER IF SERVICES ARE INTERRUPTED.

2.2 OWNER'S RIGHT TO STOP OR SUSPEND THE WORK

2.2.1 If the GC fails to correct Work which is not in accordance with the requirements of the Contract Documents or fails to carry out Work in accordance with the Contract Documents within the specified time from the date of the Owner's written notice to the GC describing such failure, the Owner may order the GC to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of the Owner to stop or suspend the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the GC or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's rights under the Contract.

2.2.2 The Owner shall have the authority to suspend the Work, in whole or in part, for such period of time as it may determine necessary, due to unsuitable weather, or any other circumstances which, in the Owner's discretion, requires a suspension of the Work. An order by the Owner to suspend the Work shall be in writing except in cases of bona fide emergencies.

2.2.3 In the event the Work is suspended in writing by the Owner for reasons beyond the GC's control or for unforeseen circumstances not otherwise provided for in the Contract Documents, which could not have reasonably been anticipated or avoided by the GC, the GC shall be granted an appropriate extension of Project Time for the period of suspension, which shall not exceed the day-for-day period of suspension, and an equitable adjustment to the Total Project Price (or an adjustment to the specific Work Authorization price if only a portion of the Work is suspended) for the increased costs of maintaining and securing the Project during the suspension period. In such an event, the GC shall not be entitled to compensation for home office overhead during the period of suspension. The GC shall not be entitled to receive any increase in the Project Time or the Total Project Price (or specific Work Authorization price, if appropriate) for suspensions which are either: (1) made at the request of the GC for its own convenience; (2) attributable to circumstances caused by the GC or those for which the GC is responsible; (3) attributable to circumstances which reasonably could have been anticipated or avoided by the GC; (4) attributable to inclement weather conditions usually experienced at the project site during the relevant time period; or (5) attributable to circumstances otherwise anticipated in the Contract Documents.

2.2.4 If the Owner does not stop or suspend the work in writing, but the project has been delayed due to reasons beyond the control of the GC, then an extension of the Project Time shall be the GC's sole and exclusive remedy for any delay of any kind or nature.

2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

2.3.1 If the GC defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to

commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, commence and continue to carry out the Work or any portion thereof. In that case, an appropriate written notification shall be issued deducting from payments then or thereafter due the GC the cost of correcting such deficiencies, including compensation for the A/E's additional services and expenses made necessary by the default, neglect or failure and all damages, costs, expenses or losses caused by the default, neglect or failure. If payments then or thereafter due the GC are not sufficient to cover amounts owed to the Owner, the GC or Surety shall pay the difference to the Owner. The right of the Owner to carry out the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the GC or any other person or entity.

ARTICLE 3 - GENERAL CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY GC

3.1.1 The GC acknowledges and declares that the Contract Documents are sufficient to enable the GC to complete the Work as shown in the Contract Documents, or if not specifically shown, to perform the activities which may be reasonably inferred as necessary for completion of the Work in accordance with the requisite time frame, applicable laws, statutes, building codes, regulations or as otherwise required by the Contract Documents. The GC shall not take advantage of any apparent error or omission in the Contract Documents. The GC shall carefully study and compare the Contract Documents with each other and with all other information furnished or made available by the Owner and shall at once report to the Owner any errors, inconsistencies or omissions discovered. If the GC performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without first providing such notice to the Owner, the GC shall assume responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.1.2 -The GC represents that it is familiar with the Project site and has received all information it needs concerning the conditions of the Project site. By executing the Work Authorization, GC represents that it has inspected the location of the Work required by that Work Authorization and has satisfied itself as to the location and condition thereof including, without limitation, the location and condition of all structures, utilities, and surface and subsurface conditions.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Any time there is work being performed by a subcontractor, a representative of the GC shall be on-site to manage the work.

3.2.2 The GC shall supervise and direct the Work, using the GC's best skill and attention. The GC shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, including coordination of the duties of subcontractors, suppliers and all trades, unless the Contract Documents give other specific instructions concerning these matters. If the GC is to provide GC services on another Project for the Owner, then a separate superintendent shall be required for each Project, unless this requirement is specifically waived by the Owner.

3.2.3 The GC shall be responsible for the acts and omissions of its employees and all of its subcontractors and their agents and employees and other persons performing any of the Work under a contract with the GC. The Owner reserves the right, but does not assume any obligation, to remove or cause to be removed from the Project any employee of the GC or its subcontractors, whenever it determines, in its sole discretion that such action is in the best interest of the Project. Removal of undesirable personnel will in no way change or reduce the obligations of the GC. Should the GC fail to remove such person or persons or fail to furnish suitable and sufficient personnel for proper prosecution of the Work, the Owner may suspend the Work by written notice until compliance with the Owner's directive is achieved.

3.2.4 The GC shall control its operations and those of its subcontractors and material suppliers to assure the least inconvenience to the traveling public. Under all circumstances, safety should be the most important consideration.

3.2.5 The GC shall be responsible for inspection or examination of portions of Work already performed under the Contract to determine that such portions are in proper condition to receive subsequent Work. The GC shall keep full detailed written records of all inspection or examination efforts. These written records shall include dates, subject matter, persons present, result of inspections or examination and shall be made available to the Owner if requested.

3.2.6 If any of the Work is required to be inspected or approved, the GC shall cause such inspection or approval to be performed. No test, inspection or examination performed or failed to be performed by the Owner, shall be a waiver of the enforcement of any of the GC's obligations.

3.2.7 The GC is fully responsible to provide a sufficient number of skilled workers, supervisors, and project management personnel to prosecute the Work and ensure that the Work is completed within the Project Time. Failure to fully staff the Project with skilled workers, or supervisors or project management personnel may be cause for termination of the Contract or such other remedies as set forth in the Contract Documents. When an event of an unusual and significant nature occurs at the Project site, including but not limited to emergencies, the GC shall prepare and submit a special report to the Owner fully describing the event, including but not limited to: persons participating, response by the GC's personnel, an evaluation of the results or effects of the event and similar pertinent information. GC shall advise the Owner as soon as possible when such events are known. The GC shall submit special reports directly to the Owner within one day of the occurrence.

3.2.8 The GC shall be responsible for providing all subcontractors with copies of the entire set of the project Drawings and Specifications in order for the subcontractors to perform the Work. The GC shall also be responsible for providing the subcontractors with coordination drawings of all related disciplines so that subcontractors may properly coordinate and prepare shop drawings and perform the Work.

3.2.9 If the Work requires GC to provide its subcontractors with access to Airport building plans, blueprints, schematic drawings and diagrams, including draft, preliminary and final formats, or any other documents that may be confidential or exempt from public disclosure under state or federal law, GC will execute and require each subcontractor requesting access to the documents listed above to execute Owner's "Non-Disclosure Agreement – Conditional Access to Building Plans, Blueprints,

Drawings, Diagrams and Specifications – Southwest Florida International Airport” or any superseding agreement and shall require each subcontractor to comply with the terms of that agreement.

3.2.10 The Owner reserves the right to contract for and perform other or additional work on or near the site of any Work covered by the Contract. When separate contracts are let within the limits of any one Project, GC shall conduct its work so as not to interfere with or hinder the progress of completion of the work being performed by other GCs or other contractors or consultants. GCs or contractors who are working on the same or adjacent projects shall cooperate with others as directed.

3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract Documents, the GC shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.3.2 The GC shall enforce strict discipline and good order among the GC’s employees and other persons carrying out the Contract. The GC shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.3.3 All construction personnel shall be restricted to construction areas. They shall wear shirts with sleeves, long pants, and hard soled footwear and otherwise be in compliance with OSHA requirements at all times. The GC’s subcontractors shall not use vehicle traffic lanes as walkways. The GC's workers shall not utilize public areas for taking their "work breaks" or "lunch breaks." Areas for this purpose may be designated by the GC with Owner approval upon request. No public toilets shall be used by any workers at any time. The GC's subcontractors shall not use restaurants, lounges or other concession areas within the Airport except as expressly approved by the Owner.

3.3.4 All equipment which is proposed to be used on the Work shall be of sufficient size and in such mechanical condition as to meet requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to previously completed work, adjacent property, or existing Airport facilities will result from its use.

3.3.5 For federally funded projects, GC must refer to and comply with the Federal Conditions for requirements concerning payroll records and reporting requirements.

3.4 WARRANTY

3.4.1 The GC warrants to the Owner and A/E that materials and equipment furnished under the Contract will be of good quality and NEW unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Owner, shall be considered defective and shall be removed and replaced at Owner’s direction and GC’s expense. If required by the Owner, the GC shall furnish satisfactory evidence as to the kind and quality of materials and equipment provided in the Work. GC

shall obtain and assign to the Owner all required express warranties given to GC or any subcontractors by those supplying materials, equipment or fixtures that are to be incorporated into the Project. If any special warranties are required by the technical specifications, the GC shall co-sign them. The GC agrees that all items furnished under this Contract shall be warranted for a period of one year from the date of written Substantial Completion, unless otherwise specified in the Contract.

3.5 TAXES

3.5.1 The GC shall pay sales, consumer, use and similar taxes for Work or portions thereof provided by the GC, which are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect.

3.6 PERMITS, FEES AND NOTICES

3.6.1 The GC shall secure and pay for the building permit and other permits and governmental fees for licenses and inspections necessary for proper execution and completion of the Work and which are required for performance of the Work, including but not limited to, any applicable building, engineering, utility, dewatering, National Pollution Discharge Elimination System (NPDES) storm water management or any other construction permits required to complete the Work. The GC shall procure all certificates for inspection, use, occupancy, and all permits and licenses, and give all notices necessary and incidental to the due and lawful prosecution of the Work. The GC shall be responsible for coordinating and scheduling all permitting agencies' tests and inspections. Certificates of inspection, use and occupancy, if applicable, shall be delivered to the Owner by the GC upon completion of the Work and in sufficient time for occupancy of the Project in accordance with the schedule for the Work. The costs of such permits, licenses, procurements, tests and inspections are included within the Total Project Price.

3.6.2 All building, structural, electrical, plumbing and mechanical work items shall be installed in accordance with the latest edition of the regulations of applicable local, state, county and other codes, including any utility company unless otherwise specified in the Contract Documents. GC shall be responsible for and shall pay for all required permits, licenses, fees and inspections.

3.6.3 In the event of a conflict between permits, drawings, or specifications the GC shall immediately bring the conflict to the attention of the Owner for a determination. The GC is responsible for all actions necessary to comply with the Owner's determination.

3.6.4 It is the GC's responsibility to contact the applicable utility company (or companies) to determine if any fees, charges or costs will be due the utility company for temporary power, installations or hookups. This fee, charge or cost shall be included in the Total Project Price.

3.6.5 It is the obligation of the GC to review the Contract Documents to determine and to notify the Owner of any discrepancy between the Contract Documents and building codes or regulations of which the GC has or should have knowledge or should be reasonably able to determine. The GC shall not violate any zoning or setback requirement of laws, codes or ordinances, or of any recorded covenants of which the GC has knowledge. If the GC observes that portions of the Contract Documents are at variance with laws, statutes, ordinances, building codes, rules or regulations, the GC shall promptly notify the Owner in

writing, and necessary changes to the Work shall be accomplished by appropriate Work Authorization Amendment after approval by the Owner.

3.6.6 If the GC performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without providing notice to the Owner, the GC shall assume full responsibility for such Work and shall bear all costs associated with bringing the Work into compliance.

3.7 SUPERINTENDENT

3.7.1 The GC shall employ a competent superintendent who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the GC, and communications given to the superintendent shall be as binding as if given to the GC. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The superintendent shall be present at all times that work is being performed, installed or affected. The Owner may request replacement of a superintendent for any cause and an acceptable replacement must be on the Project site within the specified period of time from removal of the former superintendent. The superintendent shall be the GC's representative at the site and shall have authority to act on behalf of the GC.

3.7.2 The GC's superintendent shall attend any and all meetings as required by the Owner.

3.8 GENERAL CONTRACTOR'S SCHEDULE

3.8.1 Preliminary Schedule. The GC shall submit to the Owner a Preliminary Schedule at the preconstruction meeting. The Preliminary Schedule shall be based on the calendar the GC intends to work (i.e., 5 day work week), in a bar chart format covering all major items of the Work including construction activities, milestone dates, submittal dates and procurement of materials and equipment as applicable. The Preliminary Schedule shall identify approximate start and finish dates and the sequence in which the GC proposes to carry out the Work. The Preliminary Schedule shall be based upon the Project Time specified in the Contract Documents. Upon receipt by the GC of the Work Authorization by the Owner, the GC shall proceed with the Work in accordance with the Preliminary Schedule.

3.8.3 Progress Schedules. Each month the GC shall submit a Progress Schedule to update the progress of the Work. Progress Schedules must be submitted with each GC's Application for Payment and the data contained in the Progress Schedule must accurately correspond to the progress of the Work information contained in the GC's Application for Payment. The GC's Progress Schedule must accurately reflect the actual progress of the Work as well as any revisions to the logic, sequence, durations of work activities, or level of detail of the number, description, or division of the work activities. Submission of the updated Progress Schedule to the Owner is a condition precedent to payment. The Owner may refuse to process or issue payment for an Application for Payment without the GC's submission of a current, accurate, and updated Progress Schedule that is satisfactory to the Owner.

3.8.5 If the GC's Progress Schedule reflects that the completion of the Project or a Project milestone date is not within the Project Time, then the GC must submit with the Progress Schedule the GC's proposed recovery plan for completing the Work within the Project Time. In the event the GC

claims entitlement to a time extension which is disputed by the Owner, the GC's recovery plan shall not be based upon receiving disputed time extensions.

3.8.6 The GC shall fully comply with all time and other requirements of the Contract Documents. The Owner's approval and payment of an Application for Payment, without the submission of a current, accurate Progress Schedule, shall not constitute a waiver of either the requirement for such updates or the Owner's right to withhold payment, and the GC shall not be relieved from the obligation to complete the Work within the Project Time.

3.9 DOCUMENTS AND SAMPLES AT THE SITE

3.9.1 The GC shall maintain at the site As-Built Documents comprised of one copy of the Drawings, Specifications, Addenda, Work Authorizations, and other Modifications, in good order and marked currently, to accurately reflect all as-built conditions, including, but not limited to, all locations of utilities as actually installed, all changes to the Work, and all approved Shop Drawings, Product Data, Samples and similar required submittals.

3.9.2 The GC shall maintain at the site all permit Drawings in a manner so as to make them accessible to governmental inspectors and other authorized agencies. All approved Drawings shall be wrapped, marked and delivered to the Owner within the timeframe provided in the Specifications; if no timeframe is so provided, then within a reasonable timeframe established by the Owner.

3.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.10.1 All materials, equipment and methods of construction associated with the Project will require shop drawings, product data or samples. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the GC or a subcontractor, sub-subcontractor, manufacturer, material supplier or distributor to illustrate some portion of the Work.

3.10.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the GC to illustrate materials or equipment for some portion of the Work.

3.10.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.10.4 The GC shall perform no portion of the Work or purchase any materials requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved. Such Work shall be in accordance with approved submittals. GC proceeds at his own risk if he elects to perform any work without the proper approved submittals. Consequences for noncompliance will be nonpayment by the Owner for that item, or the removal of the unapproved item.

3.10.5 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the GC represents that each subcontractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and

coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.10.6 Should the GC propose to furnish an “or equal” material or assembly, it shall furnish the manufacturer’s certificates of compliance as described herein for the specified brand name material or assembly. The Owner reserves the right to refuse permission for use of materials or procedures on the basis of certificates of compliance.

3.11 USE OF PROJECT SITE

3.11.1 The GC shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably clutter the site with materials or equipment. The GC shall not dispose of debris or waste material on the Owner’s property without the prior approval of Owner. Hazardous materials shall be disposed of pursuant to applicable state and federal statutes. At no additional cost to Owner, the GC shall take all actions necessary to coordinate the Work with other activities at the Project site, including but not limited to, the ongoing operations of the Owner, and users of the Owner’s facilities and other GCs, contractors or consultants working on, or adjacent to, the site.

3.11.2 The GC shall coordinate the operations with, and secure the approval of, the Owner before using any portion of the Project site.

3.12 CUTTING AND PATCHING

3.12.1 The GC shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.12.2 The GC shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner’s own forces or of other GCs or contractors by cutting, patching, excavating or otherwise altering such construction. The GC shall not cut or otherwise alter such construction by other contractors or by the Owner’s own forces except with written consent of the Owner and such other contractors; such consent shall not be unreasonably withheld.

3.12.3 Except as listed in the Contract Documents, the GC shall not permit any individual or firm to excavate or otherwise disturb any utility services or facilities located within the limits of the Work without the written permission of the Owner.

3.13 CLEANING UP

3.13.1 The GC shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by its operations under the Contract. Upon completion of the Work the GC shall remove from the Project site all waste materials, rubbish, the GC’s tools, construction equipment, and machinery and surplus materials. The GC shall not dispose of debris or waste materials on the Owner’s property or in waste containers (dumpsters) owned or leased by the Owner without prior approval of the Owner.

3.13.2 If the GC fails to keep the site clean as required by the Contract, then within 24 hours of written notice by the Owner, the Owner may clean the site and charge the clean-up costs to the GC or deduct the clean-up cost from any payment owed to the GC.

3.14 ACCESS TO WORK

3.14.1 The GC shall, at no additional cost and at all times, provide the Owner access to the Work subject to the applicable safety rules. This access shall include the GC's providing reasonable assistance including, but not limited to, providing ladders, equipment and workers to remove or replace heavy objects.

3.15 ROYALTIES AND PATENTS

3.15.1 If the GC is required or desires to use any design, device, invention, item, material, or process covered by letters of patent or copyright, then GC shall provide for such use by suitable legal agreement with the patent or copyright owner. The GC and its surety shall indemnify, defend, and save harmless Lee County, Florida, the Owner, any third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, invention, item, material or process, or any trademark or copyright, and for any costs, expenses, and damages, attorneys' fees, paralegal fees and expert fees incurred by reason of any claim of infringement, at any time during the prosecution or after the completion of the Work.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 CLAIMS AND DISPUTES

4.1.1 Claim. The term "Claim" means a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and GC arising out of or relating to the Contract. Claims must be made by written notice and quantified pursuant to this article. The responsibility to substantiate a Claim shall rest with the party making the Claim. Daily reports do not constitute written notice of a claim.

4.1.2 Time Limits and Claim Substantiation. Claims for additional time and/or dollars by either party must be initiated by written notice and contain a thorough description of the basis of the Claim before final project completion. The Claim must include any and all information from the Claimant needed to adequately evaluate and consider the merits of the Claim, including but not limited to, books of account, bills, invoices, payrolls, subcontracts, subcontractor payment requests, time sheets/cards, progress records, daily logs, daily reports, and cost accounting records. Failure to promptly file a Claim by their respective deadline will result in a waiver of the applicable Claim. Under no circumstances shall the GC be entitled to demand or recover from the Owner any indirect, incidental, special, or consequential damages in any proceeding arising out of or relating to the Contract or the breach thereof. A Claim may only be made by either party to the Contract. No subcontractor or subconsultant of the Claimant may file a Claim against the other party. For any Claim made by the GC against the Owner, the basis of which is information prepared by a subcontractor or any other person or entity under the GC's control, the GC must certify by written affidavit that it has carefully examined the

subcontractor's information and has verified the truth and accuracy of such information. The written affidavit must accompany the GC's Claim. Oral claims by either party, or claims as part of meeting minutes or other correspondence shall not be deemed valid. Only Claims submitted in writing by the Owner or GC specifically identifying that a Notice of Claim or Formal Claim is being filed shall be valid.

4.1.3 Continuing Contract Performance. Pending final resolution of a Claim, including the claim resolution procedures described herein, the GC shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.1.4 Waiver of Claims: Final Payment. The making of Final Payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 Claims, liens, security interests or encumbrances arising out of the Contract and unsettled at the time Final Payment is made;
- .2 Failure of the Work to comply with the requirements of the Contract Documents;
- .3 Terms of special warranties required by the Contract Documents;
- .4 Latent Defects; or
- .5 Any claim for overpayment, including, but not limited to, those resulting directly or indirectly from any erroneous measurement, estimates or quantity.

4.1.5 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts the party is legally liable, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding seven (7) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.2 RESOLUTION OF CLAIMS AND DISPUTES

4.2.1 Prior to filing a Claim, the Claimant shall initially attempt to resolve any potential future Claim it has against the other party through discussions with the other party at the time the Claim arises. Any resolution or agreement reached regarding potential future Claims must be approved in writing by both parties. If no resolution is reached and a Claim is filed with the other party, the party receiving the Claim will review the Claim and then schedule a Senior Management Resolution meeting. The Senior Management Resolution meeting shall include senior management representatives of both parties who have authority to resolve the dispute. Other parties may also participate and offer recommendations at the Owner's discretion. The GC's and Owner's senior management representatives shall meet in a good faith effort to resolve the Claim. Resolution of the Claim shall be made in writing and signed by both parties and incorporated into the Contract Documents via Contract Amendment or documented via Work Authorization Amendment. If the Claim has not been resolved by senior management, then such Claim shall be subject to voluntary pre-suit mediation and, if still unresolved, to litigation as described

below. Failure to comply with the Claim and Senior Management Resolution process by either party shall result in a waiver of the Claim.

4.3 RESOLUTION OF UNRESOLVED CLAIMS AND DISPUTES

4.3.1 Mediation. Any Claim which remains unresolved following the Senior Management Resolution process may be submitted to mediation by agreement of the parties prior to the filing of any litigation by the Owner or the GC against the other (and, except as described below, as a precondition to any such filing). Owner and the GC may also engage in pre-suit non-binding mediation. Such mediation may be requested by either party, by written notice to the other, and shall be conducted as if such mediation were ordered by a Florida Circuit Court (i.e., in accordance with, and subject to, all of the laws and rules applicable to court-ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request that the Circuit Court in Lee County, Florida (or the Mediation Coordinator for the Courts of Lee County, Florida) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not preemptorally. While the request for and the conducting of such a mediation may be a precondition to the filing of a civil action, in the event either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then suit may be filed before a mediation is conducted provided that mediation is requested before, or simultaneously with the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the complaint. If the scheduling of the mediation requires, the plaintiff in the suit shall grant the defendant an appropriate extension of time to respond to the complaint so as to permit the mediation to be conducted before the defendant must so respond. The mediation contemplated hereunder shall be conducted, unless otherwise agreed by the parties in Lee County, Florida. The parties shall bear the mediator's fee and any filing fees associated with the mediation equally.

4.3.2 Venue. Exclusive venue for any litigation between the parties arising out of, resulting from, or relating to the Contract will be in the Circuit Court for Lee County, Florida.

4.3.3 Attorney's Fees and Costs. In connection with any litigation arising out of the Contract the prevailing party shall be entitled to recover all costs incurred, including a reasonable attorney's fee, including any appeals.

ARTICLE 5 - SUBCONTRACTORS TO GC

5.1 DEFINITIONS

5.1.1 A subcontractor is a person or entity who has a direct contract with the GC to perform a portion of the Work at the site. The term "subcontractor" is referred to throughout the Contract Documents as if singular in number and means a firm or an authorized representative of the subcontractor. The term "subcontractor" does not include Owner's separate GCs, contractors or subcontractors.

5.1.2 A sub-subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to the GC to perform a portion of the Work at the site. The term "Sub-subcontractor" is

referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 It is the sole responsibility of the GC to ensure that all subcontractors and sub-subcontractors are properly licensed to perform work on the Project. Before allowing a subcontractor or sub-subcontractor to work on the Project, the GC will obtain copies of all required licenses and certifications and have them on file and available for inspection by the Owner throughout the direction of the Work.

5.2.2 The GC shall only employ legal individuals, subcontractors, and sub-subcontractors authorized to do work in the United States to perform Work on the Project. The GC shall use the e-Verify system to ensure all workers have proper legal documentation. Any illegal employees of the GC, subcontractor or sub-subcontractor working on the Project shall be immediately removed by the GC and any costs resulting from or associated with work of the illegal employee shall be the responsibility of the GC.

5.2.3 Unless otherwise stated in the Contract Documents or the bidding requirements, the GC, as soon as practicable after the opening of bids or proposals, shall furnish in writing, to the Owner the names of persons or entities proposed for each portion of the Work. The Owner will not pay the GC for any work performed by a subcontractor, where copies of the subcontractor's identification information and Workers' Compensation certificate is not on file with the GC, if requested.

5.2.4 The GC shall not contract with a proposed person or entity if the Owner has made reasonable and timely objection to contracting with that person or entity.

5.2.5 If the Owner has reasonable objection to a person or entity proposed by the GC, the GC shall propose another to whom the Owner has no reasonable objection.

5.2.6 The GC shall not change a subcontractor, person or entity previously selected if the Owner makes reasonable objection to such change. The GC may be subject to the withholding or reduction in payment should the GC elect not to comply with this requirement.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate written agreement, the GC shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the GC by terms of the Contract Documents, and to assume toward the GC all of the obligations and responsibilities which the GC, by these Contract Documents, assumes toward the Owner.

5.3.2 All work performed for the GC by a subcontractor shall be pursuant to an appropriate written agreement between the GC and the subcontractor. The GC shall provide to the Owner, if requested, copies of all subcontracts within five (5) days following the Owner's request. Failure to comply may result in the withholding or reduction in payment by the Owner.

5.3.3 All work performed for the GC by a DBE or W/MBE subcontractor shall be pursuant to an appropriate written agreement between the GC and the subcontractor. The GC shall provide to the Owner copies of all DBE and/or W/MBE signed subcontracts within fifteen (15) days of entering the DBE or W/MBE subcontractor's contract.

5.3.4 The GC and its subcontractors shall not terminate and/or substitute a DBE or W/MBE subcontractor for convenience. If the GC and its subcontractors decide to terminate or substitute a DBE or W/MBE, the GC and its subcontractors shall make an acceptable good faith effort to use another certified DBE or W/MBE subcontractor as a replacement. All substitutions or terminations must be coordinated with and approved by the Owner at the Owner's sole discretion. The GC and its subcontractors must receive prior written consent from the Owner before substitution and/or termination of a DBE or W/MBE subcontractor

ARTICLE 6 - CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD OTHER CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the GC.

6.1.2 When the Owner performs construction or operations with the Owner's own forces including Contractors under separate contracts not administered by the GC, the GC shall provide for coordination of such forces with the Work of the GC and its subcontractors, who shall cooperate with them. The GC shall coordinate its Work with other separate contractor's work, and participate with other separate contractors and the Owner in reviewing related construction schedules when directed to do so. The GC shall make any revisions to the Progress Schedule deemed necessary after a joint review and mutual agreement

ARTICLE 7 - CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Work Authorization Amendment (WAA). No change to the Contract scope, time or cost shall be authorized without a fully executed WAA. Any work performed or assumed by the GC prior to a WAA being executed by the Owner shall be at no cost or time to the Owner and shall be borne by the GC.

7.1.2 A Work Authorization Amendment shall be based upon agreement between the Owner and GC.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and GC shall proceed with the Work promptly, unless otherwise provided in the WAA.

7.2 MINOR CHANGES IN THE WORK

7.2.1 The Owner may order Minor Changes in the Work not involving adjustment in the Work Scope, Total Project Price or Project Time. Such changes shall be made in writing by the Owner to the GC. This order for a Minor Change in Work will be promptly carried out by the GC. Any disputes by the GC that the Owner-issued Minor Changes do adjust the Work Scope, Total Project Price or Project Time shall be made to the Owner in writing within five (5) working days from the receipt of the order for Minor Change

ARTICLE 8 - TIME

8.1 PROGRESS AND COMPLETION

8.1.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement and the WA the GC confirms that the Project Time is a reasonable period for performing the Work.

8.1.2 The GC shall proceed with the Work expeditiously and with adequate forces and shall achieve Substantial and Final Completion within the Project Time established by the Contract Documents.

8.2 DELAYS AND EXTENSIONS OF TIME

8.2.1 The Project Time shall be adjusted only by WAA. Any request for a Work Authorization Amendment involving a time extension shall be delivered to the Owner. The GC shall take all steps reasonably possible to minimize the adverse impact of the events giving rise to the time extension request (the "delay event") on the Work.

8.2.2 Should the GC desire an extension of Project Time, such time extension request must be supported with a summary analysis of the basis or cause of the potential delay event, supporting documentation evidencing the basis or cause of the delay event, and sufficient scheduling data demonstrating the anticipated impact to the critical path.

8.2.3 In addition to the requirements set forth herein, if unusual or abnormal inclement weather conditions are the basis for a request for an adjustment of Project Time, the GC shall be required to demonstrate the extent to which weather conditions had an adverse effect on critical path construction activities.

8.2.4 If any portion of the Work remains uncompleted after the expiration of the Project Time, including all extensions and adjustments thereto, the Owner will incur substantial injury, including loss of use of facilities and inconvenience to the public. Damages arising from such injuries cannot be calculated with any degree of certainty. It is agreed that if the Work is not substantially completed and finally completed as defined in the Work Authorization within the established Project Time or within such further time, if any, as shall be allowed for such completion in accordance with the Contract Documents, the GC or the GC's Surety shall pay to the Owner Liquidated Damages, not as a penalty, but as an agreed amount between the parties, recognizing the impossibility of precisely ascertaining the actual damages to Owner for such delay. The amount of the Liquidated Damages is defined in the Work

Authorization for the Project imposing specific Liquidated Damages for any portion of the Work under the Contract. Permitting the GC to finish the Work after the expiration of the Project Time established by the Work authorization shall in no way operate as a waiver by the Owner of any of its rights under this Article or elsewhere in the Contract Documents

8.3 NO DAMAGE FOR DELAY TO GC

8.3.1 Notwithstanding any provision in the Contract Documents to the contrary, an extension of the Project Time shall be the GC's sole and exclusive remedy for any delay of any kind or nature, with the exception of GC's right to an equitable adjustment to the Total Project Price as set forth in Section 2.2.3 above.

8.3.2 Regardless of any early completion date anticipated by the GC or indicated by the GC on any Progress Schedule or any other form of communication, under no circumstances shall the GC be entitled to additional compensation for delays unforeseen by the GC in its performance of the Work caused by circumstances beyond its control where the Work is completed within the Project Time.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 TOTAL PROJECT PRICE

9.1.1 The Total Project Price is the total amount of all Work Authorizations and Work Authorization Amendments issued under the Project and is the total amount payable by the Owner to the GC for performance of the Work under the Contract Documents.

9.1.2 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the GC hereunder if and for so long as the GC fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided, however, that any such withholding shall be limited to an amount sufficient, in the reasonable opinion of the Owner, to cure any such default or failure of performance by the GC

9.2 APPLICATIONS FOR PAYMENT

9.2.1 Application for payment from the GC will be emailed to the Owner for review and approval. The exact format of this electronic payment submittal will be determined by the Owner.

9.2.2 Each Application for Payment shall be certified as correct by the GC. In addition, each Application for Payment shall contain the following certification: "GC hereby certifies that, except as indicated on the attached documents, there are no Claims of GC, its subcontractors or material suppliers as of the date of this Application for Payment that have not been completely resolved, that the GC has no knowledge of any unresolved Claims by subcontractors or material suppliers, that all subcontractors and material suppliers have been paid to date from funds received for previous Applications for Payment, that there is no known basis for the filing of any Claim on the Work and GC, upon receipt of funds due in this Application for Payment, hereby releases the Owner from any claims arising from the Work."

9.2.3 Prior to processing any Pay Application submitted by the GC, the following items must be submitted by the GC with the Pay Application:

- Copy of the Work Authorization and Work Authorization Amendments
- GC Personnel Hours
- Draw Request Cover
- GC's Partial Release of Lien
- Subcontractors' Partial Release of Lien

If all items are not received, the Pay Application may be returned to the GC.

9.2.4 Such applications may not include requests for payment of amounts the GC does not intend to pay to a subcontractor or material supplier because of a dispute or other reason.

9.2.5 The GC warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The GC shall be responsible for adequately securing and protecting from damages, including weather, all materials and equipment stored either on or off the Owner's property. The GC further warrants that upon submittal of an Application for Payment all Work for which payments have been previously received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the GC, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials or equipment relating to the Work.

9.3 DECISIONS TO WITHHOLD CERTIFICATION

9.3.1 The Owner may decide not to approve payment and may withhold an Application for Payment in whole or in part, to the extent reasonably necessary to protect the Owner from loss because of:

- .1 Defective Work not remedied;
- .2 Third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 Failure of the GC to make payments properly to subcontractors or for labor, materials or equipment;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Total Project Price;
- .5 Damage to the Owner or another Contractor;
- .6 Reasonable evidence that the Work will not be completed within the Project Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

.7 Persistent failure to carry out the Work in accordance with the Contract Documents; or

9.3.2 When the above reason(s) for withholding certification are removed, certification will be made for amounts previously withheld.

9.3.3 If the GC disputes any determination by the Owner with regard to any Application for Payment, the GC nevertheless shall continue to expeditiously prosecute the Work

9.4 CONTINUED PERFORMANCE PENDING PAYMENT

9.4.1 The Owner's obligation to make timely payments and the GC's obligations to diligently prosecute the Work shall continue uninterrupted during the time a payment dispute is pending between the Owner and the GC or between the GC and a subcontractor or material supplier.

9.5 FINAL COMPLETION AND FINAL PAYMENT

9.5.1 When the GC considers that the Work is Finally Complete, the GC will submit a written or verbal request to the Owner for a Final Completion inspection.

9.5.2 As a result of the Final Completion inspection, if the Owner determines that the Work is not Finally Complete, the Owner will submit to the GC a written determination that the Work is not Finally Complete within five (5) days of the inspection. The determination will include a listing of those items that must be completed in order for the Owner to consider the Work Finally Complete. The GC must complete the listed work and then request in writing a subsequent Final Completion inspection. No additional Project Time shall be granted for the GC's failure to achieve Final Completion. This process will continue until the Owner determines the Work is Finally Complete.

9.5.3 When the Owner finds the Work acceptable under the Contract Documents and that Contract has been fully performed, including the delivery of all close out documentation required herein, the Owner will approve the final GC's Application for Payment, thereby representing that to the best of its knowledge, information and belief, and on the basis of its observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the amount requested in the GC's Final Application for Payment has been earned and is due and payable subject to the Owner's claims, liquidated damages and back charges, if any.

9.5.4 Acceptance of Final Payment by the GC, a subcontractor or material supplier (hereinafter "payee") shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of Final Application for Payment.

9.5.5 GC shall provide final cleaning of the Work, at the time indicated, consisting of cleaning each surface or unit of work to normal clean condition. GC shall remove temporary protection devices and facilities which were installed during course of the Work to protect previously completed work during the remainder of the construction period. GC shall comply with safety standards and governing regulations for cleaning operations. GC shall not burn waste materials, or bury debris or excess materials on the Owner's property, or discharge volatile or other harmful or dangerous materials into

drainage systems, or remove waste materials from site and dispose of those materials in an unlawful manner.

9.6 OWNER'S AUDIT RIGHTS

9.6.1 The GC's records shall be open to inspection and subject to audit or reproduction by the Owner or its authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the Work pursuant to the execution of the Contract.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The GC shall be responsible for initiating, maintaining and supervising all safety precautions and implementing and monitoring a safety program in connection with the performance of the Work, including but not limited to those requirements in this Article. The GC may be required to submit to the Owner a copy of its safety plan within ten (10) days of issuance of any Work Authorization.

10.1.2 In the event the GC fails to initiate, maintain, supervise or monitor the safety of its operations during the performance of the Work, including the operations of its subcontractors, material suppliers and any others for whom the GC is responsible, or the GC fails to otherwise comply with any reporting documentation or other requirement imposed by an insurer providing any of the insurance coverages, then the Owner may, without reservation, pursue any rights or remedies against the GC that are available, under the Contract or by law, including withholding of payment.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The GC shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 Employees or of other persons who may be affected by the Work;
- .2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, and whether under care, custody or control of the GC or the GC's subcontractors or sub-subcontractors;
- .3 Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 Construction or operations by the Owner or other GCs or contractors.

10.2.2 The GC shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The GC shall erect and maintain, as required by existing conditions and the Contract Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the owners and users of adjacent sites and utilities of dangerous conditions.

10.2.4 The GC shall protect adjoining private or public property and shall provide barricades, temporary fences, and covered walkways required to protect the safety of passers-by, as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents.

10.2.5 When use or storage of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the GC shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.6 The GC shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to herein caused in whole or in part by the GC, a subcontractor, or anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable and for which the GC is responsible, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the GC. The foregoing obligations of the GC are in addition to the GC's other obligations herein.

10.2.7 The GC shall designate a responsible member of the GC's organization as the on-site safety representative whose duty shall be the safety of persons and property as provided herein. This person shall be the GC's superintendent unless otherwise designated by the GC in writing to the Owner.

10.3 HAZARDOUS MATERIALS

10.3.1 In the event the GC encounters on the site material reasonably believed to be hazardous material, such as asbestos or polychlorinated biphenyl (PCB), the GC shall immediately stop work in the area affected and verbally report the condition to the Owner followed by notification in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Owner and GC if in fact the material is hazardous and has not been rendered harmless. The work in the affected area shall be resumed if the material is not hazardous, or if it has been rendered harmless, by written agreement of the Owner and GC.

10.3.2 The GC shall not be required to perform any Work relating to hazardous material without its prior consent.

10.4 EMERGENCIES

10.4.1 In an emergency affecting safety or persons or property, the GC shall act to prevent threatened damage, injury or loss.

10.5 PERFORMANCE AND PAYMENT BONDS

10.5.1 A Performance Bond and a Payment Bond in a form acceptable to the Owner, each in an initial amount of not less than the Total Project Price, will be required from the GC to guarantee (a) faithful performance of the requirements of the Contract Documents, including all applicable warranties; and (b) the payment for all labor, materials, or supplies used directly or indirectly in the prosecution of the Work provided for in the Contract Documents.

- .1 The Bonds shall be written through a licensed Florida agency on behalf of a surety company licensed to do business in Florida and meeting the following requirements:

10.5.2 The GC shall, before commencing the Work, record a copy of the Performance and Payment Bonds in the Lee County Clerk of the Circuit Court's office pursuant to Florida Statute Section 255.05. Upon request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the GC shall promptly furnish a copy of the applicable bond or shall permit a copy to be made.

10.5.3 If the Surety on any bond furnished by the GC is declared bankrupt or becomes insolvent or its right to do business is terminated or suspended in any state or it ceases to meet the requirements defined herein, the GC shall within ten (10) days thereafter substitute another Performance Bond and a Payment Bond from a different Surety, pursuant to the Contract Documents.

ARTICLE 11 - UNCOVERING AND CORRECTION OF WORK

11.1 CORRECTION OF WORK

11.1.1 The GC shall promptly correct Work rejected by the Owner that fails to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The GC shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Owner's and A/E's services and expenses made necessary thereby.

11.1.2 If, within one year after the date of Completion of the Work or designated portion thereof, or after the date for commencement of warranties established herein, or by terms of an applicable special warranty that may be required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the GC shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the GC a written acceptance of that specific condition. If the GC does not proceed with correction of nonconforming Work within a reasonable time, fixed by written notice from the Owner, the Owner may correct or remove such nonconforming work and all costs for such corrections or removals shall be assessed against the GC.

11.1.3 Nothing contained herein shall be construed to establish a period of limitation with respect to other obligations which the GC might have under the Contract Documents. Establishment of the time period of one year relates only to the specific obligation of the GC to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be

sought to be enforced, nor to the time within which proceedings may be commenced to establish the GC's liability and damages with respect to the GC's obligations other than specifically to correct the Work.

11.2 ACCEPTANCE OF NONCONFORMING WORK

11.2.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction. If the Owner accepts the Work under such circumstances, the Total Project Price will be reduced in an appropriate and equitable manner through a Contract Amendment as determined by the Owner, whether or not final payment has been made.

11.3 TESTS AND INSPECTIONS

11.3.1 For the purpose of determining whether the Work is acceptable (as opposed to the GC's quality control activities for which the GC is solely responsible) tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be performed at appropriate times. The GC shall be responsible for coordinating and scheduling all permitting agencies' tests and inspections described herein. The Owner shall make arrangements for all other quality assurance tests, examinations and inspections with such testing laboratories or entities and, except as provided herein or in the technical specifications, the Owner shall bear the costs of such quality assurance tests, examinations and inspections that the Owner so arranges. The GC shall provide the Owner's testing representatives reasonable access to the Work (ladders, etc.), at no additional cost, for the purpose of performing such quality assurance tests, examinations and inspections.

11.3.2 In the event the testing, examination and inspection, or approval procedures performed reveal that the Work fails to meet the requirements of the Contract Documents, the GC shall bear all costs arising from the failure, including, but not limited to, the costs to correct the Work and the costs of tests, examinations, inspections and services performed by the Owner in connection with such tests, examinations, inspections, or approval procedures necessary to establish that the GC's work conforms with the requirements of the Contract Documents.

11.4 MAINTENANCE MEETINGS

11.4.1 The GC shall arrange for each installer of work requiring continuing maintenance or operation, to meet with Owner's personnel, at the Project, to provide basic instructions needed for proper operation and maintenance of the installer's work. At the maintenance meeting the GC shall:

- .1 Provide instructions by the manufacturer's representatives when the installers are not expert in the required procedures;
- .2 Review with the Owner all maintenance manuals, record documentation, tools, spare parts and materials, lubricants, fuel, identification systems, control sequences, hazards, cleaning and similar procedures and facilities;

- .3 For operational equipment, demonstrate startup, shutdown, emergency operations, noise and vibration adjustments, safety, economy, efficiency adjustments, and similar operations; and
- .4 Review with the Owner all maintenance and operations in connection with applicable warranties, agreements to maintain bonds, and similar continuing commitments.

11.5 DRUG FREE WORKPLACE REQUIREMENTS

11.5.1 The Southwest Florida International Airport, Page Field General Aviation Airport, and Lee County are drug free workplaces. GC and all subcontractors and material suppliers are required to follow the Drug Free Workplace Act of 1988 and all relevant provisions of the Omnibus Transportation Employee Testing Act of 1991.

ARTICLE 12 - TERMINATION OR SUSPENSION OF THE CONTRACT

12.1 TERMINATION BY THE OWNER FOR CAUSE

12.1.1 The Owner may terminate the Contract if the GC:

- .1 Fails to perform the Work by not providing a sufficient number of adequately skilled workers or supervisory staff who actively staff the Project and prosecute the Work, or fails to have available at the Project site proper equipment or materials to assure completion of the Work in accordance with the terms of the Contract Documents, or
- .2 Performs the Work unsuitably or neglects or refuses to remove materials or to perform anew any Work that may be rejected as unacceptable and unsuitable, or
- .3 Fails to commence the Work, maintain adequate progress towards completion of the Work or discontinues the prosecution of the Work, or
- .4 Fails to carry out the requirements of the Owner's DBE Policies, or
- .5 Allows any final judgment against it as it relates to this Project to remain unsatisfied for a period of thirty (30) days,
- .6 Makes an assignment for the benefit of creditors, or
- .7 Fails to carry on the Work in accordance with the Contract Documents, which includes failure to fulfill the administrative/paperwork requirements of the Contract, or
- .8 Consents to the appointment of a receiver, trustee or liquidator of all or substantially all of the property of GC, or

- .9 Is the subject of any order or decree of any court or governmental authority or agency having jurisdiction, appointing a receiver, trustee or liquidator to take possession or control of all or substantially all of the GC's property for the benefit of creditors, or
- .10 If at any time the Surety executing a bond is determined by the Owner to be unacceptable and the GC fails to furnish an acceptable substitute Surety within fifteen (15) days after notice from the Owner, or
- .11 For any other cause, fails to carry on the Work in an acceptable manner.

12.1.2 When any of the above reasons exists, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the GC and the GC's Surety seven (7) calendar days written notice and provided the GC, within such seven (7) calendar day period, has not commenced in good faith to cure the cause or breach (or if having commenced such cure, is not proceeding diligently to complete such cure), terminate employment of the GC, in whole or in part, and may, subject to any prior rights of the Surety:

- .1 Take possession of the Project Site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the GC;
- .2 Accept assignment of any or all subcontracts;
- .3 Finish the Work by whatever reasonable method the Owner may determine necessary.

12.1.3 When the Owner terminates the Contract for one of the reasons stated herein, the GC shall not be entitled to receive further payment until the Work is completed.

12.1.4 If the unpaid balance of the Total Project Price exceeds the costs of finishing the Work, including compensation for A/E services and other expenses made necessary thereby, such excess shall be paid to the GC. If the costs of finishing the Work exceed the unpaid balance, the GC shall pay the difference to the Owner.

12.2 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE

12.2.1 The Owner may, without cause, by written order direct the GC to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

12.2.2 An extension of Project Time equal to the period of suspension shall be the GC's sole and exclusive remedy for a suspension by the Owner, with the exception of GC's right to an equitable adjustment to the Total Project Price as set forth in Section 2.2.3 above.

12.2.3 The Owner may terminate the Contract, in whole or in part at any time, for its convenience, by giving the GC thirty (30) calendar days' written notice. The Owner shall have the right, in that event, to take over any or all of the GC's material, supplies, or subcontracts in order to complete the Work and the GC shall assign to the Owner such materials, supplies or subcontracts and purchase

orders. The GC shall proceed to complete any part of the Work, as directed by the Owner, and shall attempt to settle all subcontractor and material supplier claims and obligations under the Contract with the Owner. The GC shall be compensated by the Owner for the GC's reasonable costs (including reasonable profits earned on work performed up to the date of termination but excluding anticipatory profits on unperformed portions of the Work), and the GC shall justify its Claims as requested by the Owner with accurate records and data.