Lee County Port Authority
Airports Special Management Committee

Meeting Agenda
1:30 PM
December 17, 2019
Training and Conference Center
Southwest Florida International Airport

Pledge of Allegiance

Public Comment on Consent and Administrative Agenda

Interim Executive Director Recognitions

Consent Agenda

Administrative Agenda

Interim 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 October 15, 2019 Airports Special Management Committee (ASMC) meeting.
   
   **Term:**
   N/A
   
   **Funding Source:**
   N/A

2. Request Committee approve the minutes of the November 7, 2019 Airports Special Management Committee (ASMC) Special meeting.
   
   **Term:**
   N/A
   
   **Funding Source:**
   N/A

3. Request Board approve the Actual Fiscal Year 2018-19 Rates and Fees for Southwest Florida International Airport and authorize any fee settlement and revenue sharing to the airlines, as required by the Airline-Airport Use Agreement.
   
   **Term:**
   N/A
   
   **Funding Source:**
   General airport operating revenues collected during the normal operation of the Airport, Fund 41200.

4. Request Board approve a budget amendment to the Fiscal Year 2019-20 Port Authority Budget to properly account for the $50,000,000 revolving credit facility.
   
   **Term:**
   N/A
   
   **Funding Source:**
   Fund 41262 - Revolving Credit Facility

5. Request Board consent to a proposed amendment and extension of a sublease from Aero Ft. Myers, LLC to United Parcel Service, Inc.
   
   **Term:**
   November 1, 2019, to October 31, 2024
   
   **Funding Source:**
   n/a

6. Request Board approve a “Nonparticipating Airline Airport Use Permit” agreement at Southwest Florida International Airport with Swift Air, L.L.C.
   
   **Term:**
   month to month, beginning October 20, 2019
   
   **Funding Source:**
   n/a
CONSENT AGENDA – Continued

ADMINISTRATION – Brian McGonagle

7. Request Board approve a “First Amendment to Lease of Terminal Space at Southwest Florida International Airport” with Airline Tech Reps, LLC.
   
   **Term:**
   month-to-month, beginning December 1, 2019

   **Funding Source:**
   n/a

8. Request Board approve a “Second Amendment to November 9, 1999 Land Lease with ALH Aviation, LLC”
   
   **Term:**
   potentially extends to Jan. 31, 2051

   **Funding Source:**
   n/a

9. Request Board consent to a proposed amendment to the Fuel System Interline Agreement
   
   **Term:**
   until September 30, 2031

   **Funding Source:**
   n/a

AVIATION – Gary Duncan

10. Request Board award RFB 19-15LD Fuel Tank Polishing to 1800 FUELGUY, LLC d/b/a TANK KLEEN, the lowest responsive, responsible bidder, authorize the Chair to execute the attached Service Provider Agreement on behalf of the Board

    **Term:**
    One (1) year term with the possibility of three (3) additional one (1) year renewal periods.

    **Funding Source:**
    General Airport Operating Revenues collected during the normal operation of SWFIA, Account WJ53000041200.503490.

11. Request Board award RFB 19-35MLW for the Purchase of Diesel and Unleaded Fuel for the Lee County Port Authority to Palmdale Oil Company, Inc., the lowest, most responsive, responsible bidder and authorize the Chair to execute the attached Service Provider Agreement on behalf of the Board.

    **Term:**
    Initial term of three (3) years with option for one (1) additional two (2) year term.

    **Funding Source:**
    General Airport Operating Revenues collected during the normal operation of RSW & FMY, Account WJ51000041200.505210 Maintenance Resources.
CONSENT AGENDA - Continued

AVIATION – Gary Duncan

12. Request Board permit transfer of $7,613.00 from fund 10501 Law Enforcement Trust Fund to 41200 for the purchase of a portable hardtop canopy.
   
   Term:
   N/A
   
   Funding Source:
   10501 Law Enforcement Trust Fund

13. Request Board approve the transfer of $5,530 from fund 10501 - Law Enforcement Trust Fund to 41200 for the purchase of a LiveScan Electronic Fingerprint System.
   
   Term:
   N/A
   
   Funding Source:
   10501 Law Enforcement Trust Fund

14. Request the Board approve the purchase of one (1) 2019 John Deere 6120M Tractor with 30-foot telescoping boom and 60-inch radial cutting deck from Alamo Industrial utilizing the Florida Sheriffs Association Cooperative Purchasing Program (FSA19-Veh 17.0) for a total cost of $186,478.00.
   
   Term:
   N/A
   
   Funding Source:
   Capital Account VB5131541200.506410 in the amount of $186,478.00.

DEVELOPMENT – Mark Fisher

15. Accept a revision to the state grant (Public Transportation Grant Agreement, Financial Project Nos. 441981-1-94-01 and 441981-1-94-02) with the Florida Department of Transportation for the Terminal Expansion at Southwest Florida International Airport.
   
   Term:
   N/A
   
   Funding Source:
   N/A

16. Request Board approve a contract amendment to DeAngelis Diamond Construction, General Construction Manager-General Contractor to extend the contract time to complete six land management Tasks.
   
   Term:
   September 30, 2020
   
   Funding Source:
   N/A
CONSENT AGENDA – Continued

PORT ATTORNEY – Greg Hagen

17. Approve Recognition Agreement recognizing sublease of Page Field Commons retail space to Ross Dress for Less, Inc.

   **Term:**
   N/A

   **Funding Source:**
   N/A
ADMINISTRATIVE AGENDA

INTERIM EXECUTIVE DIRECTOR – Ben Siegel

18. Update on the RSW Terminal Expansion Project

   Term: N/A
   Funding Source: N/A

COMMENTS FROM THE CHAIR OF THE ASMC

INTERIM EXECUTIVE DIRECTOR ITEMS

PORT ATTORNEY ITEMS

ADJOURN
# BOARD OF PORT COMMISSIONERS
## OF THE
### LEE COUNTY PORT AUTHORITY

1. REQUESTED MOTION/PURPOSE: Request Committee approve the minutes of the October 15, 2019 Airports Special Management Committee (ASMC) meeting.
2. FUNDING SOURCE: N/A
3. TERM: N/A
4. WHAT ACTION ACCOMPLISHES: Approves minutes for October 15, 2019 ASMC meeting pursuant to Florida Statute §286.011 and LCPA Policy.

<table>
<thead>
<tr>
<th>5. CATEGORY:</th>
<th>1. Consent Agenda</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. ASMC MEETING DATE:</td>
<td>12/17/2019</td>
</tr>
<tr>
<td>7. BoPC MEETING DATE:</td>
<td>N/A</td>
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<tr>
<th>8. AGENDA:</th>
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<tbody>
<tr>
<td>CEREMONIAL/PUBLIC PRESENTATION</td>
</tr>
<tr>
<td>X CONSENT</td>
</tr>
<tr>
<td>____ ADMINISTRATIVE</td>
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</tbody>
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<thead>
<tr>
<th>9. REQUESTOR OF INFORMATION:</th>
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<tbody>
<tr>
<td>(ALL REQUESTS)</td>
</tr>
<tr>
<td>NAME: Brian McGonagle</td>
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<tr>
<td>____ Administration</td>
</tr>
</tbody>
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| 10. BACKGROUND: |

Attachment:
ASMC Meeting Minutes - 10/15/2019 - Draft

| 11. RECOMMENDED APPROVAL |

<table>
<thead>
<tr>
<th>DEPUTY EXEC DIRECTOR</th>
<th>COMMUNICATIONS AND MARKETING</th>
<th>OTHER</th>
<th>FINANCE</th>
<th>PORT ATTORNEY</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Benjamin R Siegel</td>
<td>Victoria S Moreland</td>
<td>N/A</td>
<td>Brian W McGonagle</td>
<td>Gregory S Hagen</td>
<td>Benjamin R Siegel</td>
</tr>
</tbody>
</table>

| 12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION: |
| APPROVED |
| APPROVED as AMENDED |
| DENIED |
| OTHER |

| 13. PORT AUTHORITY ACTION: |
| APPROVED |
| APPROVED as AMENDED |
| DENIED |
| DEFERRED to |
| OTHER |
A meeting of the Airports Special Management Committee (ASMC) was held this date, October 15, 2019, in the Training and Conference Center at Southwest Florida International Airport, with the following members present:

Robbie Roepstorff (Vice-Chair)
Noel Andress
John Goodrich
Fran Myers
Scott Cameron
Dana Carr

Committee Chair Randy Krise was absent for the entire meeting.

Vice-Chair Robbie Roepstorff 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 October and the Procurement Status Report for October.

PUBLIC PRESENTATION:

1. Aviation Division Director Chris Styles, gave a brief history of job experience, accomplishments, and personal life, and along with the ASMC Vice-Chair, congratulated and presented Length of Service Awards to:
   - Mark Adams - 25 Year Service Award
   - Richard Keane – 30 Year Service Award

EXECUTIVE DIRECTOR RECOGNITIONS: Recognitions were deferred to Executive Director Items at the end of meeting.

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:

Robbie Roepstorff (Vice-Chair)
Noel Andress
John Goodrich
Fran Myers
Scott Cameron
Dana Carr
None
None
None
None
None
None
CONSENT AGENDA - A motion to approve the Consent agenda was made by Noel Andress, seconded by Fran Myers; called and carried with Committee Chair Randy Krise absent (6-0).

CONSENT AGENDA ITEMS

ADMINISTRATION

2. Request Committee approve the minutes of the September 17, 2019 Airports Special Management Committee (ASMC) meeting.
   
   **Term:**
   N/A
   
   **Funding Source:**
   N/A

3. Approve the Joint and ASMC meeting date schedule for the calendar year 2020.
   
   **Term:**
   N/A
   
   **Funding Source:**
   N/A

4. Request Board approve a Declaration of Intent Resolution allowing for reimbursement of costs incurred on three capital projects: the Terminal Expansion, the Airport Traffic Control Tower and the Replacement of the Passenger Boarding Bridges.
   
   **Term:**
   N/A
   
   **Funding Source:**
   N/A

5. Request Board approve a concurring resolution authorizing the Lee County Port Authority to secure a taxable bank loan in the form of a revolving credit facility not to exceed $50,000,000 for the purpose of providing interim funding for various projects in the Lee County Port Authority’s Five Year Capital Program for Southwest Florida International Airport.
   
   **Term:**
   N/A
   
   **Funding Source:**

6. Request Board approve a “First Amendment to Lease of Terminal Space at Southwest Florida International Airport” with Arthrex, Inc.
   
   **Term:**
   commenced June 1, 2019; month-to-month
   
   **Funding Source:**
   n/a
7. Request Board award Request for Bids (RFB) #19-20TB (“New Entrant On-Airport Rental Car Concession at Southwest Florida International Airport”) to Sixt Rent A Car, LLC, as the highest qualified bidder, and authorize the Board’s Chair or Vice Chair to execute the contract documents with the successful bidder.

   **Term:**
   five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter

   **Funding Source:**
   n/a

8. Request Board approve a new “On-Airport Rent-A-Car Concession Lease and Operating Agreement” with Avis Budget Car Rental, LLC.

   **Term:**
   five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter

   **Funding Source:**
   n/a


   **Term:**
   five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter

   **Funding Source:**
   n/a


   **Term:**
   five years, beginning February 1, 2020, with the Authority having options to extend up to five years thereafter

   **Funding Source:**
   n/a

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

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

   **Funding Source:**
   n/a
DEVELOPMENT

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

   **Term:**
   N/A

   **Funding Source:**
   N/A

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

   **Term:**
   N/A

   **Funding Source:**
   N/A

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

   **Term:**
   Five years

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

PORT ATTORNEY

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

   **Term:**
   N/A

   **Funding Source:**
   N/A
ADMINISTRATIVE AGENDA ITEMS

ADMINISTRATION

16. Request Board rank qualifications submitted for RFP#19-26TB Professional Financial Advisory Services for the Lee County Port Authority.

   **Term:**
   3 years with 2 one year extensions

   **Funding Source:**
   N/A

Deputy Executive Director of Administration Ben Siegel gave a brief summary to update the Committee on this item and stated that staff recommends ASMC rank firms in accordance with the staff’s review and scoring of the three submitting firms. However, if the ASMC members would like to hear oral presentations prior to their ranking, staff recommends these be held with the three submitting firms, with the presentations held at a future ASMC meeting. The staff ranking of proposals is as follows:

1. PFM Financial Advisors, LLC
2. Frasca and Associates
3. Hilltop Securities

John Goodrich asked Mr. Siegel why staff chose PFM Financial over Frasca and Associates. Mr. Siegel responded to the question by stating that both firms were great firms, but in this particular instance staff has worked with PFM’s principal over the past few years and was more familiar with them and that was the deciding factor. Scott Cameron asked if we met with each firm personally. Mr. Siegel responded to the question to Mr. Cameron’s satisfaction. With no further questions, the ASMC then ranked the firms in order of the staff’s recommendation and as a result ranked PFM Financial Advisors, LLC as the number one ranked firm.

With no further discussion, Noel Andress moved approval, seconded by Fran Myers, called and carried, with Committee Chair Randy Krise absent (6-0).

EXECUTIVE DIRECTOR ITEMS:

**Employee Recognitions**

The details of the recognitions are contained in the Executive Director Employee Achievement Remarks (Copy on file, electronically, in the Communications & Marketing Department at the Lee County Port Authority).

**Remarks**

Items of interest are contained in the Executive Director Remarks dated October 15, 2019 (copy on file, electronically, in the Communications & Marketing Department at the Lee County Port Authority).

Mr. Mulder discussed an incident at RSW on October 7, 2019 when a private aircraft experienced a nose wheel collapse on landing. The aircraft was disabled on the runway, which closed RSW to flight operations for nearly two hours. There was a team effort to remove the aircraft but ten scheduled flights were either significantly delayed or cancelled, affecting more than 1000 passengers. It is fortunate that if this had to happen it was late at night and in a slow month. Mr. Mulder said we continue to meet with the FAA to move the Parallel Runway Project forward.

ASMC MEETING MINUTES OF OCTOBER 15, 2019 - DRAFT
Robbie Roepstorff asked if there was anything the ASMC members could not to expedite the parallel runway. Mr. Mulder answered the question to her satisfaction.

Scott Cameron asked if LCPA had a written plan of action for emergencies involving aircraft incidents or accidents. Mr. Mulder confirmed we do.

**PORT ATTORNEY ITEMS**
No items offered by County Attorney Richard Wesch.

**AIRPORTS SPECIAL MANAGEMENT COMMITTEE ITEMS**
Vice-Chair Robbie Roepstorff remarked that the ribbon-cutting ceremony for the new hangar at Page Field on Oct. 10 went very well and that the staff did an awesome job.

**ADJOURN**
The Chair adjourned the meeting at 1:50 p.m.
1. REQUESTED MOTION/PURPOSE: Request Committee approve the minutes of the November 7, 2019 Airports Special Management Committee (ASMC) Special meeting.
2. FUNDING SOURCE: N/A
3. TERM: N/A
4. WHAT ACTION ACCOMPLISHES: Approves minutes for November 7, 2019 ASMC Special meeting pursuant to Florida Statute §286.011 and LCPA Policy.
5. CATEGORY: 2. Consent Agenda
6. ASMC MEETING DATE: 12/17/2019
7. BoPC MEETING DATE: N/A
8. AGENDA:
   - CEREMONIAL/PUBLIC PRESENTATION
   - CONSENT
   - ADMINISTRATIVE
9. REQUESTOR OF INFORMATION: (ALL REQUESTS)
   NAME: Brian McGonagle
   DIV.: Administration
10. BACKGROUND:
    Attachment:
    Special ASMC Meeting Minutes - 11/7/2019 - Draft

11. RECOMMENDED APPROVAL

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12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:
- APPROVED
- APPROVED as AMENDED
- DENIED
- OTHER

13. PORT AUTHORITY ACTION:
- APPROVED
- APPROVED as AMENDED
- DENIED
- DEFERRED to
- OTHER
A special meeting of the Airports Special Management Committee (ASMC) was held this date, November 7, 2019, in the Training and Conference Center at Southwest Florida International Airport, with the following members present:

Randy Krise (Chair)
Robbie Roepstorff (Vice-Chair)
Noel Andress
Fran Myers
John Goodrich
Dana Carr

Committee member Scott Cameron was absent for the entire meeting.

Chairman Randy Krise called the meeting to order at 9:00 a.m.

CONSENT AGENDA

Consent - Special Item

1. Request Board approve a “Ground Lease For Construction and Operation of an MRO Facility at Southwest Florida International Airport” with Intrepid Aerospace, Inc.
   Term:
   commences January 1, 2020, and continues until 40 years after the “Date of Beneficial Occupancy (which will be no later than January 1, 2023); Lessee will have two (2) options to extend by five years each
   Funding Source:
   n/a

Deputy Executive Director of Administration Ben Siegel gave a brief summary to update the committee on this item. There were questions from the ASMC members, all of which were answered satisfactorily by Mr. Siegel and Executive Director Jeff Mulder. Inquiries included the number of potential jobs this MRO would produce and the financial strength of the company.

With no further discussion, Committee Chair, Randy Krise called for a motion. Noel Andress moved approval, seconded by Fran Myers, called and carried with Committee member Scott Cameron absent (6-0).

Committee Chair Randy Krise and Committee member Robbie Roepstorff congratulated and thanked everyone involved in the collaborative effort to get the contract done.

Committee Chair Randy Krise reminded the Committee members that the November 19, 2018 ASMC meeting is cancelled.

The Chairman adjourned the meeting at 9:13 a.m.
1. **REQUESTED MOTION/PURPOSE**: Request Board approve the Actual Fiscal Year 2018-19 Rates and Fees for Southwest Florida International Airport and authorize any fee settlement and revenue sharing to the airlines, as required by the Airline-Airport Use Agreement.

2. **FUNDING SOURCE**: General airport operating revenues collected during the normal operation of the Airport, Fund 41200.

3. **TERM**: N/A

4. **WHAT ACTION ACCOMPLISHES**: Allows for the timely recalculation of airline rates and charges as outlined in the Airline-Airport Use and Lease Agreement.

5. **CATEGORY**: 3. Consent Agenda

6. **ASMC MEETING DATE**: 12/17/2019

7. **BoPC MEETING DATE**: 1/16/2020

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

9. **REQUESTOR OF INFORMATION**: (ALL REQUESTS)
   - NAME: Brian McGonagle
   - DIV.: Administration

10. **BACKGROUND**:
    Pursuant to the Southwest Florida International Airport's Airline-Airport Use Agreement, the Airport's rates and fees must be recalculated annually using actual revenues received and actual expenditures paid. Additionally, after the determination of the airline fee settlement, those airlines that have signed the aforementioned agreement will share a portion of net remaining revenues collected during the year, less any amounts required to be deposited in other funds, pursuant to the procedures set forth in the Agreement.

Attachment:
Actual Rates and Fees FY 2018-19

11. **RECOMMENDED APPROVAL**

<table>
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<td>Gregory S. Hagen</td>
<td>Benjamin R. Siegel</td>
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12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION**:
- APPROVED
- APPROVED as AMENDED
- DENIED
- OTHER

13. **PORT AUTHORITY ACTION**:
- APPROVED
- APPROVED as AMENDED
- DENIED
- DEFERRED to
- OTHER
Lee County Port Authority

Actual Rates & Fees Settlement

Southwest Florida International Airport

Fiscal Year 2018-2019
#### Lee County Port Authority
Southwest Florida International Airport
Summary of Revenues and Expenses for the Re-Calculation of Airline Rates & Fees
Fiscal Year 2018-2019

### Fiscal Year Ending

<table>
<thead>
<tr>
<th>Revenue/Expense Category</th>
<th>Adopted Budget 2019</th>
<th>Actual 2019</th>
<th>Variance</th>
<th>%</th>
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<tbody>
<tr>
<td>Terminal Rental Revenue</td>
<td>$6,621,150</td>
<td>$6,384,843</td>
<td>$(236,307)</td>
<td>-3.57%</td>
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<tr>
<td>Gate Area Revenue</td>
<td>$2,066,111</td>
<td>$1,990,870</td>
<td>$(75,241)</td>
<td>-3.65%</td>
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<tr>
<td>Baggage Area Charges</td>
<td>$13,125,534</td>
<td>$13,384,701</td>
<td>259,167</td>
<td>1.97%</td>
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<tr>
<td>Landing Fee Revenue</td>
<td>$2,198,389</td>
<td>$2,220,068</td>
<td>21,679</td>
<td>0.99%</td>
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<tr>
<td>Apron Fee Revenue</td>
<td>$66,681,764</td>
<td>$71,568,837</td>
<td>4,887,073</td>
<td>7.33%</td>
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<tr>
<td>Non Signatory Revenue</td>
<td>$3,363,931</td>
<td>$3,305,783</td>
<td>$(58,148)</td>
<td>-1.73%</td>
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<tr>
<td>LCPA Transfer in Passenger Facility Charges</td>
<td>$449,004</td>
<td>$370,462</td>
<td>(78,542)</td>
<td>-20.78%</td>
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<tr>
<td>LCPA Transfer in FIS Revenue</td>
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<td></td>
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Total Revenue: $105,163,168

### Expenses

<table>
<thead>
<tr>
<th>Expense Category</th>
<th>Adopted Budget 2019</th>
<th>Actual 2019</th>
<th>Variance</th>
<th>%</th>
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<tbody>
<tr>
<td>Personnel</td>
<td>$34,526,492</td>
<td>$32,490,861</td>
<td>(2,035,631)</td>
<td>-6.01%</td>
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<tr>
<td>Operating</td>
<td>$35,902,947</td>
<td>$33,397,312</td>
<td>(2,505,635)</td>
<td>-7.02%</td>
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<tr>
<td>Total Expenses</td>
<td>$70,429,439</td>
<td>$65,888,173</td>
<td>(4,541,266)</td>
<td>-6.44%</td>
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</tbody>
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Net Revenue: $34,733,728

### Net Funds Remaining Before Required Adjustments

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<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>%</th>
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<tbody>
<tr>
<td>Less Airline Coverage Contribution - Working Capital Reserve</td>
<td>$114,485</td>
<td>-100.00%</td>
</tr>
<tr>
<td>Less ARFF Station Amortization (Airfield)</td>
<td>$51,029</td>
<td>0.00%</td>
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<tr>
<td>Less Rental Car Reallocation Project (Ground Transportation)</td>
<td>$896,108</td>
<td>0.00%</td>
</tr>
<tr>
<td>Less Stucco Repairs (Terminal)</td>
<td>$122,594</td>
<td>0.00%</td>
</tr>
<tr>
<td>Less FIDS Replacement (Terminal)</td>
<td>$354,884</td>
<td>0.00%</td>
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<tr>
<td>Less ARFF Truck (Airfield)</td>
<td>$71,496</td>
<td>0.00%</td>
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<tr>
<td>Less Parking Garage Restoration (Ground Transportation)</td>
<td>$126,861</td>
<td>0.00%</td>
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<tr>
<td>Less ARFF Doors (Airfield)</td>
<td>$75,832</td>
<td>0.00%</td>
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<tr>
<td>Less Airport Fund Deficit</td>
<td>$700,190</td>
<td>100.00%</td>
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<tr>
<td>Total Net Funds Remaining</td>
<td>$8,234,185</td>
<td>81.25%</td>
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### Airline Statistics

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Passengers</td>
<td>9,015,849</td>
<td>10.59%</td>
</tr>
<tr>
<td>Total Landed Weight</td>
<td>5,087,418</td>
<td>8.60%</td>
</tr>
</tbody>
</table>

### Net Signatory Rates:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landing Fee - Signatory</td>
<td>$2.58</td>
<td>-6.98%</td>
</tr>
<tr>
<td>Terminal Rental Rate - Signatory</td>
<td>$106.13</td>
<td>-9.84%</td>
</tr>
<tr>
<td>Apron Fee Per Gate - Signatory</td>
<td>$129,317</td>
<td>-4.82%</td>
</tr>
<tr>
<td>Net Signatory Cost Per Enplanement</td>
<td>$7.44</td>
<td>-28.38%</td>
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### Airport Statistics

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Passengers</td>
<td>9,015,849</td>
<td>10.59%</td>
</tr>
<tr>
<td>Total Landed Weight</td>
<td>5,087,418</td>
<td>8.60%</td>
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</table>
### Lee County Port Authority

**Southwest Florida International Airport**

**Terminal Rental Rate**

**Fiscal Year 2018-2019**

<table>
<thead>
<tr>
<th>Fiscal Year Ending</th>
<th>Budget 2019</th>
<th>Actual 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terminal Investment Service</td>
<td>$16,169,496</td>
<td>$16,168,815</td>
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<tr>
<td>Terminal Operating Expenses</td>
<td>$31,829,288</td>
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<td>Terminal Expense Operating Reserve</td>
<td>$288,408</td>
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<td>Terminal Amortization</td>
<td>$477,478</td>
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<tr>
<td><strong>Total Requirement</strong></td>
<td>$48,764,670</td>
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<tr>
<td>Less: PFC Revenues</td>
<td>$3,363,931</td>
<td>$3,305,783</td>
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<td>Less: FIS Credit</td>
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<td>$370,462</td>
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<td><strong>Net Requirement</strong></td>
<td>$45,400,739</td>
<td>$40,937,960</td>
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<td><strong>Total Rentable Space</strong></td>
<td>427,798</td>
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<tr>
<td>Signatory Airline Terminal Rental Rate</td>
<td>$106.13</td>
<td>$95.69</td>
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<tr>
<td>Extraordinary Coverage</td>
<td>$ -</td>
<td>$ -</td>
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<tr>
<td><strong>Required Signatory Airline Terminal Rental Rate (1.25 Coverage)</strong></td>
<td>$106.13</td>
<td>$95.69</td>
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<tr>
<td>Non Signatory Terminal Rental Rate (110%)</td>
<td>$116.74</td>
<td>$116.74</td>
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<tr>
<td>Signatory Airline Terminal Rental Space - Gates</td>
<td>59,235</td>
<td>50,773</td>
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<tr>
<td>Signatory Airline Terminal Rental Space - Baggage</td>
<td>60,650</td>
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<td>Signatory Airline Terminal Rental Space - Exclusive Space</td>
<td>59,145</td>
<td>65,106</td>
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<td>Non Signatory Leased Airline Space</td>
<td>2,948</td>
<td>1,327</td>
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<td><strong>Total Leased Airline Space</strong></td>
<td>181,978</td>
<td>177,855</td>
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<td>Signatory Airline Terminal Rental Revenue</td>
<td>$19,000,454</td>
<td>$16,891,998</td>
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<tr>
<td>Non Signatory Terminal Rental Revenue</td>
<td>$344,091</td>
<td>$154,898</td>
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<td><strong>Total Terminal Rental Revenue</strong></td>
<td>$19,344,545</td>
<td>$17,046,896</td>
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<tr>
<td>Category</td>
<td>2018</td>
<td>2019</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>------------</td>
<td>------------</td>
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<tr>
<td>Airfield Investment Service</td>
<td>$5,646,981</td>
<td>$5,646,742</td>
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<tr>
<td>Airfield Operating Expenses</td>
<td>10,628,104</td>
<td>11,056,096</td>
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<tr>
<td>Airfield Operating Expense Reserve</td>
<td>120,825</td>
<td>-</td>
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<tr>
<td>Airfield Amortization</td>
<td>198,357</td>
<td>198,357</td>
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<td><strong>Total Requirement</strong></td>
<td><strong>$16,594,267</strong></td>
<td><strong>$16,901,196</strong></td>
</tr>
<tr>
<td>Less: Airfield Non Airline Revenue</td>
<td>3,488,990</td>
<td>3,648,161</td>
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<tr>
<td><strong>Net Requirement</strong></td>
<td><strong>$13,105,277</strong></td>
<td><strong>$13,253,034</strong></td>
</tr>
<tr>
<td>Signatory Landed Weight</td>
<td>4,094,098</td>
<td>4,834,344</td>
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<tr>
<td>Non Signatory Landed Weight</td>
<td>993,318</td>
<td>690,804</td>
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<tr>
<td><strong>Total Landed Weight</strong></td>
<td><strong>5,087,416</strong></td>
<td><strong>5,525,148</strong></td>
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<td>Landing Fee</td>
<td>$2.58</td>
<td>$2.40</td>
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<tr>
<td>Extraordinary Coverage</td>
<td>-</td>
<td>$-</td>
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<tr>
<td>Required Landing Fee (1.25 Coverage)</td>
<td>$2.58</td>
<td>$2.40</td>
</tr>
<tr>
<td>Landing Fee Non-Signatory</td>
<td>$2.58</td>
<td>$2.58</td>
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<tr>
<td>Signatory Landing Fee Revenue</td>
<td>$10,562,773</td>
<td>$11,602,426</td>
</tr>
<tr>
<td>Non Signatory Landing Fee Revenue</td>
<td>$2,562,760</td>
<td>$1,782,275</td>
</tr>
<tr>
<td><strong>Total Landing Fee Revenue</strong></td>
<td><strong>$13,125,534</strong></td>
<td><strong>$13,384,701</strong></td>
</tr>
<tr>
<td>Fiscal Year Ending</td>
<td>Budget 2019</td>
<td>Actual 2019</td>
</tr>
<tr>
<td>----------------------------</td>
<td>-------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Apron Investment Service</td>
<td>$ 61,716</td>
<td>$ 61,713</td>
</tr>
<tr>
<td>Apron Operating Expenses</td>
<td>3,523,856</td>
<td>3,391,726</td>
</tr>
<tr>
<td>Apron Operating Expense Reserve</td>
<td>35,314</td>
<td>-</td>
</tr>
<tr>
<td>Total Apron Requirement</td>
<td>$ 3,620,886</td>
<td>$ 3,453,439</td>
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<tr>
<td>Total Gates</td>
<td>28</td>
<td>28</td>
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<tr>
<td>Apron Fee Per Gate</td>
<td>$ 129,317</td>
<td>$ 123,337</td>
</tr>
<tr>
<td>Leased Gates</td>
<td>17</td>
<td>18</td>
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<tr>
<td>Apron Fee Revenue</td>
<td>$ 2,198,389</td>
<td>$ 2,220,068</td>
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</tbody>
</table>
## Investment Service and Allocation to Cost Centers

**Fiscal Year 2018-2019**

<table>
<thead>
<tr>
<th>Fiscal Year Ending</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2019</td>
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</table>

**Investment Service**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Airport Refunding Series 2010</td>
<td>$13,498,721</td>
</tr>
<tr>
<td>Airport Refunding Series 2011</td>
<td>9,514,839</td>
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<tr>
<td>Airport Refunding Series 2015</td>
<td>1,671,653</td>
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</table>

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Debt Service (Excluding PFC'S)</td>
<td>24,685,213</td>
</tr>
<tr>
<td>Total Debt Service</td>
<td>24,685,213</td>
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<tr>
<td>Debt Service Coverage</td>
<td>6,171,303</td>
</tr>
<tr>
<td>Total Investment Service</td>
<td>$30,856,516</td>
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</table>

**Allocation of Investment Service to Cost Centers**

<table>
<thead>
<tr>
<th>Cost Center</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airfield (18.3%)</td>
<td>$5,646,742</td>
</tr>
<tr>
<td>Apron (0.2%)</td>
<td>61,713</td>
</tr>
<tr>
<td>Terminal (52.4%)</td>
<td>16,168,815</td>
</tr>
<tr>
<td>Ground Transportation (28.2%)</td>
<td>8,701,538</td>
</tr>
<tr>
<td>Aviation (0.6%)</td>
<td>185,139</td>
</tr>
<tr>
<td>Non Aviation (0%)</td>
<td>-</td>
</tr>
<tr>
<td>Air Cargo (0.3%)</td>
<td>92,570</td>
</tr>
<tr>
<td>Total Investment Service</td>
<td>$30,856,516</td>
</tr>
</tbody>
</table>
## Lee County Port Authority
### Southwest Florida International Airport
### Signatory Cost Per Enplanement
#### Fiscal Year 2018-2019

<table>
<thead>
<tr>
<th>Fiscal Year Ending</th>
<th>Budget 2018</th>
<th>Actual 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signatory Landing Fee Revenues</td>
<td>$10,562,773</td>
<td>$11,602,426</td>
</tr>
<tr>
<td>Signatory Terminal Rental Revenue</td>
<td>$19,000,464</td>
<td>$16,891,998</td>
</tr>
<tr>
<td>Signatory Apron Revenue</td>
<td>$2,198,389</td>
<td>$2,220,068</td>
</tr>
<tr>
<td><strong>Total Signatory Passenger Airline Revenue</strong></td>
<td><strong>$31,761,616</strong></td>
<td><strong>$30,714,493</strong></td>
</tr>
<tr>
<td>Less: Revenue Sharing</td>
<td>$(3,293,674)</td>
<td>$(5,969,747)</td>
</tr>
<tr>
<td>Less: Extraordinary Coverage</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Net Signatory Passenger Airline Revenue</strong></td>
<td><strong>$28,467,942</strong></td>
<td><strong>$24,744,746</strong></td>
</tr>
<tr>
<td>Total Signatory Airline Enplanements</td>
<td>3,824,624</td>
<td>4,642,366</td>
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<tr>
<td><strong>Net Signatory Cost per Enplanement</strong></td>
<td><strong>$7.44</strong></td>
<td><strong>$5.33</strong></td>
</tr>
<tr>
<td>Revenue Source</td>
<td>Total RSW</td>
<td>Airfield</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>-----------</td>
<td>----------</td>
</tr>
<tr>
<td>Investment Income</td>
<td>$3,090,421</td>
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<td>Fuel Systems</td>
<td>2,287,479</td>
<td>2,287,479</td>
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<td>Catering</td>
<td>314,463</td>
<td>314,463</td>
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<td>Insurance Proceeds</td>
<td>24,526</td>
<td>4,488</td>
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<tr>
<td>Passenger Aircraft Parking</td>
<td>103,346</td>
<td>103,346</td>
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<td>Utility Income</td>
<td>126,140</td>
<td>2,668</td>
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<tr>
<td>Misc Revenue - Airport</td>
<td>84,875</td>
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<tr>
<td>Misc Revenue - Police</td>
<td>51,117</td>
<td>9,354</td>
</tr>
<tr>
<td>Misc Revenue - Administration</td>
<td>36,140</td>
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<tr>
<td>Sale of Equipment</td>
<td>24,490</td>
<td>4,482</td>
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<td>Late Fees</td>
<td>3,447</td>
<td>3,447</td>
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<td>Misc Revenue - Maintenance</td>
<td>17,876</td>
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<td>RSW Airside Pavement</td>
<td>30,471</td>
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<td>Refund Prior Year</td>
<td>1,030</td>
<td>1,030</td>
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<tr>
<td>Discounts Taken</td>
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<td>1,569</td>
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<tr>
<td>Misc Revenue - OPS</td>
<td>3,733</td>
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<tr>
<td>Misc Revenue - ARFF</td>
<td>370</td>
<td></td>
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<tr>
<td>Misc Revenue - FBO Landing Fees</td>
<td>91,213</td>
<td>91,213</td>
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<td>Apron Use Fees</td>
<td>389,746</td>
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<td>Restaurants</td>
<td>4,221,903</td>
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<td>Terminal Concessions</td>
<td>3,606,558</td>
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<td>Airport Facility Charge</td>
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<tr>
<td>Facility Use Charge</td>
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<td>Terminal Space Rent</td>
<td>1,533,380</td>
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<td>Equipment Use Charge</td>
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<td>Space Rent Commercial</td>
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<td>Hold Room Charges - Sig</td>
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<tr>
<td>Misc Revenue (K9)</td>
<td>151,500</td>
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<tr>
<td>Misc Revenue (LEO)</td>
<td>131,211</td>
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<tr>
<td>Misc Revenue (DAS)</td>
<td>49,750</td>
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<td>FIS Revenues</td>
<td>370,462</td>
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<tr>
<td>Rental Cars</td>
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<td>Parking Lot Fee</td>
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<tr>
<td>Building Rent - RAC</td>
<td>1,346,698</td>
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<tr>
<td>Off AP Rental Cars</td>
<td>1,287,268</td>
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<td>Taxi Permit/Trip</td>
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<td>Employee Parking</td>
<td>439,410</td>
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<td>Land Rent Commercial (Gas Station)</td>
<td>216,224</td>
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<tr>
<td>Courtesy Permit/Trip</td>
<td>230,685</td>
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<tr>
<td>Off AP Parking</td>
<td>192,293</td>
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<td>Provider Permit Fees</td>
<td>28,019</td>
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<tr>
<td>Fuel Flow Fees - Gas Station</td>
<td>26,278</td>
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<td>Bus Fees</td>
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<td>Fuel Systems (RAC)</td>
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<td>Land Rent Commercial</td>
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<td>Privilege Fee</td>
<td>1,254,903</td>
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<td>Bld Rent RAC Frontage Rd</td>
<td>306,854</td>
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<td>Cell Phone Tower Charges</td>
<td>133,481</td>
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<tr>
<td>Cargo Ramp User Fee</td>
<td>304,122</td>
<td>34,925</td>
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<td>Third Party Cargo Fees</td>
<td>118,731</td>
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<tr>
<td>Tenant Cargo BLDG Rental</td>
<td>111,458</td>
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<tr>
<td>Airline Cargo BLDG Rental</td>
<td>72,150</td>
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<tr>
<td>Hurricane IRMA</td>
<td>413,916</td>
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<tr>
<td>Passenger Facility Charge</td>
<td>3,305,783</td>
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</tr>
<tr>
<td>Total</td>
<td>75,245,062</td>
<td></td>
</tr>
<tr>
<td>Loss FIS</td>
<td>(3,305,783)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$71,940,280</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Airport Total</td>
<td>Allocable</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td><strong>Personnel Expenditures</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries &amp; Wages</td>
<td>$22,149,400</td>
<td>$8,098</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>32,490,861</td>
<td>11,127</td>
</tr>
<tr>
<td>Add Allocations</td>
<td>(11,127)</td>
<td>1,936</td>
</tr>
<tr>
<td><strong>Operating Expenditures</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contractual Services, Materials &amp; Supplies</td>
<td>20,975,778</td>
<td>1,643,126</td>
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<tr>
<td>Utilities</td>
<td>4,194,146</td>
<td>190,708</td>
</tr>
<tr>
<td>Repairs &amp; Maintenance</td>
<td>2,959,624</td>
<td>0</td>
</tr>
<tr>
<td>Insurance</td>
<td>1,575,931</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>3,691,833</td>
<td>1,806,318</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>33,397,312</td>
<td>3,640,152</td>
</tr>
<tr>
<td>Add Allocations</td>
<td>(3,640,152)</td>
<td>633,387</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td>$65,888,173</td>
<td>$ -</td>
</tr>
</tbody>
</table>

Lee County Port Authority
Southwest Florida International Airport
Distribution of Operating Expenditures
Fiscal Year 2018-2019
Lee County Port Authority
Southwest Florida International Airport
Actual Landed Weight
Fiscal Year 2018-2019
Oct

Nov

Dec

Jan

Feb

Mar

Apr

May

Jun

Jul

Signatory Airlines

American
Delta
Frontier
JetBlue
Southwest
Spirit Airlines
United
Total Signatory

52,087.6

60,823.3

63,568.3

78,446.8

78,012.1

63,474.4
12,383.6

65,582.6

89,812.4 110,812.1

98,727.9

35,686.5

59,925.0

60,114.8

53,975.2

46,691.6
46,797.2

57,398.6

62,698.5

56,175.3

64,084.8

75,170.4

81,102.4 100,211.2

16,587.6

59,068.0

67,433.0

33,673.0

40,813.9

52,186.7

90,643.3

78,955.0

68,304.0

54,351,5

53,236.3

148,333.5 111,811.7
60,575.2
57,122.4

97,440.4

78,218.2

74,873.4

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18,419.2

19,112.4

74,595.8

73,044.4

45,356.1

35,774.4

31,860.3

95,823.2

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72,804.1

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12,420,8

53,788.4

55,673.0

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57,690.7

43,478.8

26,793.1

24,154.5

271,695.0 394,543.3 476,726.3 532,352.7 513,271.5 679,853.0 546,974.3 359,852.1 289,792.4 273,225.7

Non Signatory Airlines

Airborne Express
Air Canada
Air Canada rouge

320.0

171.5

319.9
3,716.8

11,263.0

18,905.5

18,233.1

21,804.4

31,909.1

21,557.9

2,296.1

1,778.9
166.4

666.0

2,192.0

492.0

124.0
492.0

Air Transat

Antonov
Atlantic Southeast
Atlas Air
Choice

727.5
88.2

67.0

Comiux

492.0

DHL

198.0

Eastern

270.0

Elite
Endeavor

Envoy
Estafeta
Eurowings
Federal Express
GoJets

Miami Air
Northern Air
Republic
Silver Airways
Sky Lease Cargo
SkyWest
Sun Country
Swift Air

67.0

275.0
6,308.4

6,008.0

4,280.7

75.1

6,458.6

6,383.5

225.3

43.7

162.3

149.9

43.7

392.9

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7,008.5

4,534.9

4,947.2

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5,445.4

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7,722.0

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7,657.8

670.0

134.0
75.0
146.3

2,098.8

IBC

Mesa

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299.8

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171.0

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146.3

146.3

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310.0

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TACA

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TAP Portugal
Twenty-One Air

UPS
Western Globa!
Westjet
World Atlantic
Total Non Signatory
Totai Landed Weight

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2,840.5

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6,670.9

9,212.0

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7,350.0

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491.5

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67,675.2

36,824.7

34,115.1

322,684.3 454,234.6 555,110,7 610,342.0 595,083,1 771,385.6 614,649.5 396,676.8 323,907.5

763.0

Aug

Sep

Total


### Lee County Port Authority
Southwest Florida International Airport

**Actual Enplaned Passengers**

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### Signatory Airlines

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<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
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#### Total Signatory


### Affiliate Airlines

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<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
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#### Total Affiliate

|                         | 6,365 | 5,814 | 7,377 | 11,493 | 9,999 | 7,167 | 4,688 | 149 | 1,359 | 1,584 | 1,187 | 3,777 | 60,936 |

#### Total Signatory & Affiliate

|                        | 252,011 | 376,832 | 421,088 | 490,121 | 505,476 | 685,074 | 559,626 | 368,361 | 289,796 | 276,890 | 260,998 | 217,032 | 4,703,305 |

### Non Signatory Airlines

<table>
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<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Total</th>
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<tr>
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#### Total Non Signatory

|                         | 19,401 | 28,125 | 34,925 | 39,460 | 42,987 | 60,250 | 42,032 | 15,292 | 8,894 | 11,919 | 11,876 | 8,209 | 323,370 |

### Total Enplanements


---

10.
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<th>Jan</th>
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<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sep</th>
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## Lee County Port Authority
Southwest Florida International Airport
Airline Settlement of Rates & Fees
Fiscal Year 2018-2019

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1. **REQUESTED MOTION/PURPOSE:** Request Board approve a budget amendment to the Fiscal Year 2019-20 Port Authority Budget to properly account for the $50,000,000 revolving credit facility.

2. **FUNDING SOURCE:** Fund 41262 - Revolving Credit Facility

3. **TERM:** N/A

4. **WHAT ACTION ACCOMPLISHES:** Provides for a budget amendment to properly account for the $50,000,000 revolving credit facility.

5. **CATEGORY:** 4.
   Consent Agenda

6. **ASMC MEETING DATE:** 12/17/2019

7. **BoPC MEETING DATE:** 1/16/2020

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

9. **REQUESTOR OF INFORMATION:**
   (ALL REQUESTS)
   - NAME: Brian McGonagle
   - DIV: Administration

10. **BACKGROUND:**
    In November 2019, the Board approved a resolution authorizing the Lee County Port Authority to secure a taxable bank loan in the form of a revolving credit facility not to exceed $50,000,000 for the purpose of providing interim funding for various projects in the Lee County Port Authority's Five Year Capital Program. In order to properly account for the loan, a budget amendment to the 2019-20 Port Authority Budget is required.

Attachment
Budget Amendment

11. **RECOMMENDED APPROVAL**

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</table>

12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**
   - APPROVED
   - APPROVED as AMENDED
   - DENIED
   - OTHER

13. **PORT AUTHORITY ACTION:**
   - APPROVED
   - APPROVED as AMENDED
   - DENIED
   - DEFERRED to
   - OTHER
RESOLUTION

Amending the Lee County Port Authority Budget for additional revenues and expenditure during Fiscal Year 2019-20.

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 2019-20.

41262 - 2019 Revolving Credit Facility

ESTIMATED REVENUES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from 41200 - RSW Operating Fund</td>
<td>250,000</td>
</tr>
<tr>
<td>Transfer from 41250 - Passenger Facility Charge Fund</td>
<td>250,000</td>
</tr>
<tr>
<td>Transfer from 41234 - RSW Construction Fund</td>
<td>240,000</td>
</tr>
<tr>
<td>Interest on Investments</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>Total Estimated Revenues</strong></td>
<td><strong>$750,000</strong></td>
</tr>
</tbody>
</table>

APPROPRIATIONS

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Payment</td>
<td>750,000</td>
</tr>
<tr>
<td><strong>Total Estimated Appropriations</strong></td>
<td><strong>$750,000</strong></td>
</tr>
</tbody>
</table>

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 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
John E. Manning
Cecil L Pendergrass
Raymond Sandelli

Done and adopted by the Board of Port Commissioners this ____________ day of ____________ 2019

ATTEST:
CLERK OF THE CIRCUIT COURT
BY: ____________________________
        Deputy Clerk

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA
BY: ____________________________
        Chairman

APPROVED AS TO LEGAL FORM:
BY: ____________________________
        Office of the Port Attorney
# BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

1. **REQUESTED MOTION/PURPOSE:** Request Board consent to a proposed amendment and extension of a sublease from Aero Ft. Myers, LLC to United Parcel Service, Inc.

2. **FUNDING SOURCE:** n/a

3. **TERM:** November 1, 2019, to October 31, 2024

4. **WHAT ACTION ACCOMPLISHES:** authorizes Aero Ft. Myers, LLC to amend and extend its current sublease to United Parcel Service, Inc.

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

6. **ASMC MEETING DATE:** 12/17/2019

7. **BoPC MEETING DATE:** 1/16/2020

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

9. **REQUESTOR OF INFORMATION:**
   (ALL REQUESTS)
   - NAME: Brian McGonagle
   - DIV.: Administration

10. **BACKGROUND:**
    Aero Ft. Myers, LLC (“Aero”) is the Authority’s current tenant under a master lease of a 5.45-acre parcel adjacent to the cargo apron at Southwest Florida International Airport. Upon this leased parcel is a 24,000-square-foot cargo building, containing 10 bays subleased to various third parties, such as Federal Express and United Parcel Service.

    United Parcel Service Co. (“UPS Co.”) currently engages in air cargo carrier operations at the airport, pursuant to a “Non-Exclusive Operating Agreement for Air Cargo Carrier” dated March 20, 1989. Pursuant to a 2008 sublease from Aero, UPS Co.’s affiliate, United Parcel Service, Inc. (“UPS Ohio”) subleases a 2,400-square-foot bay in the cargo building. That sublease is set to expire October 31, 2019. Aero and UPS Ohio desire to amend the sublease and to extend its term.

    Pursuant to the master lease, any sublease requires the Authority’s consent, which will not be unreasonably withheld. The master lease also provides that the sublease shall state that it is subject and subordinate to all of the provisions of the master lease, and that the subtenant’s rights shall not survive the earlier termination of the master lease, unless the Authority elects that it shall, in which event, the subtenant shall attorn to the Authority. These provisions are included in the proposed amendment.

    Approval of this agenda item by the Board of Port Commissioners will constitute consent by the Lee County Port Authority to the proposed “Amendment No. 4 to Net Lease” between Aero and UPS Ohio, provided, however, that this consent shall not operate as a waiver of any prohibition in the master lease against further assignment or subletting without Authority’s consent as provided in the lease.

11. **RECOMMENDED APPROVAL**

<table>
<thead>
<tr>
<th>DEPUTY EXEC DIRECTOR</th>
<th>COMMUNICATIONS AND MARKETING</th>
<th>OTHER</th>
<th>FINANCE</th>
<th>PORT ATTORNEY</th>
<th>INTERIM EXECUTIVE DIRECTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benjamin R Siegel</td>
<td>Victoria B Moreland</td>
<td>N/A</td>
<td>Brian W McGonagle</td>
<td>Gregory S Hagen</td>
<td>Benjamin R Siegel</td>
</tr>
</tbody>
</table>

12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**
    - APPROVED
    - APPROVED as AMENDED
    - DENIED
    - OTHER

13. **PORT AUTHORITY ACTION:**
    - APPROVED
    - APPROVED as AMENDED
    - DENIED
    - DEFERRED to
    - OTHER
Background (continued)

Attachments:
1. Contract Summary for existing ground (master) lease
2. Proposed Amendment No. 4 to Sublease
CONTRACT SUMMARY

Agreement: Ground Lease (“Assumption Agreement for Lease of Cargo Facility Site at Southwest Florida International Airport, dated January 14, 2002, as amended)

Tenant: Aero Ft. Myers, LLC
c/o Aeroterm US, Inc.
19115 Lee Road, Suite 226
Humble, Texas 77338

Leased Premises: approximately 5.45 acres at RSW

Allowed Use(s): air cargo terminal facility; customs and administration offices

Term of Lease: expires January 31, 2032

Rent: currently $10,290.03 per month, plus sales tax, subject to CPI adjustments every October 1st

Security/Perf. Guaranty: n/a

Insurance: Commercial General Liability: $10,000,000
Property insurance: full replacement value

Note: This Contract Summary is intended as a general summary only, for ease of review, and is not a part of the contract. In the event of any conflict between this summary and the proposed contract, the contract (being more precise) will prevail.
AMENDMENT NO. 4 TO NET LEASE

This Amendment No. 4 to Net Lease ("Amendment") is made and entered into this the 1st day of November, 2019 ("Effective Date") between Aero Ft. Myers, LLC, a Delaware limited liability company, ("Landlord") and United Parcel Service, Inc., an Ohio corporation ("Tenant").

RECITALS:

WHEREAS, on or about October 31, 2008, Tenant entered into that certain Net Lease with Landlord, as amended by that certain Amendment No. 1 to Net Lease dated February 18, 2009, as amended by that certain Amendment No. 2 to Net Lease dated October 31, 2009 and as further amended by that certain Amendment No. 3 to Net Lease dated December 3, 2014 (collectively the "Lease"), for the purpose of leasing 2,400 square feet of space located at 15960 Chamberlin Parkway, Suite W-01, Fort Myers, Florida 33913 (the "Premises") as more particularly shown on Exhibit "A" attached hereto.

WHEREAS, Landlord and Tenant desire to enter into this Amendment to extend the Term of the Lease with respect to the Premises.

NOW, THEREFORE, in consideration of the covenants and agreements made herein, Landlord and Tenant hereby covenant and agree as follows:

1. **DEFINITIONS:** Except as may otherwise be defined herein, capitalized terms used in this Amendment shall have the meanings ascribed to them in the Lease.

2. **AMENDMENTS TO LEASE:** Notwithstanding any provision of the Lease to the contrary upon the Effective Date the Lease shall be amended as follows:
   (i) Tenant and Landlord acknowledge that the Term of the Lease will expire on October 31, 2019, and that the Term of the Lease shall hereby be extended from November 1, 2019 through October 31, 2024, and Tenant shall have no rights or options to extend the Term;
   (ii) commencing November 1, 2019 and continuing thereafter, without demand, the Net Rent attributable to the Premises shall be:

<table>
<thead>
<tr>
<th>Dates</th>
<th>Annual Net Rent</th>
<th>Monthly Net Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/01/2019-10/31/2020</td>
<td>30,000.00</td>
<td>* 2,500.00</td>
</tr>
<tr>
<td>11/01/2020-10/31/2021</td>
<td>30,600.00</td>
<td>* 2,550.00</td>
</tr>
<tr>
<td>11/01/2021-10/31/2022</td>
<td>31,212.00</td>
<td>* 2,601.00</td>
</tr>
<tr>
<td>11/01/2022-10/31/2023</td>
<td>31,836.24</td>
<td>* 2,653.02</td>
</tr>
<tr>
<td>11/01/2023-10/31/2024</td>
<td>32,472.96</td>
<td>* 2,706.08</td>
</tr>
</tbody>
</table>

   * plus all applicable Florida Sales Tax

   (iii) commencing November 1, 2019 and continuing thereafter, without demand, the annual Additional Rent due on the Premises shall continue to be due in accordance with Sections 3 and 4 of the Lease, with such annual adjustments occurring on January 1 of each year of the Lease Term;

   (iv) Tenant’s current Security Deposit of $3,841.44 shall remain as-is; and
(v) Tenant’s “Proportionate Share” as shown on the Reference Page shall be deleted.

3. OTHER TERMS AND CONDITIONS OF THIS AMENDMENT:

A. Tenant accepts the Premises in “as-is” condition, without representation or warranty.

B. Section 3 RENT of the Lease shall be deleted in its entirety and replace with the following:

3. RENT. Tenant shall pay the Monthly Net Rent as set forth on the Reference Page, plus other sums due hereunder (Additional Rent), together known as Rent, on or before the first day of each month. Rent shall be paid to Landlord in lawful money of the United States of America, which payments shall be remitted electronically (for which Landlord shall provide necessary wiring information) without offset, deduction or, except as expressly provided herein, notice. If the Rent payment is not received in FULL by the fifth (5th) of each month and such failure continues for more than ten (10) days after the date on which Landlord gives Tenant written notice of such delinquency, such Rent payment shall incur a late fee as Additional Rent equal to the greater of: (a) two hundred dollars ($200.00) or (b) five percent (5%) of the monthly Rent amount due. Landlord and Tenant agree that such late charge represents a reasonable estimate of such costs and expenses and is fair reimbursement to Landlord. In no event shall such late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any rent or prevent Landlord from exercising any right or enforcing any remedy available to Landlord upon Tenant’s failure to pay each installment of rent due under this Lease when due, including the right to terminate this Lease and recover all damages from Tenant. No payment by Tenant or receipt by Landlord of a lesser amount of Monthly Net Rent, Additional Rent or any other sum due hereunder, shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such rent or payment or pursue any other remedy available in this Lease, at law or in equity. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice required by any law pertaining to eviction or summary remedy for regaining possession of real property in the event of tenant default.

C. Section 4 EXPENSES of the Lease shall be deleted in its entirety and replaced with the following:

4. EXPENSES.

A. Expenses of the Property shall include Building Expenses, Office Expenses and Warehouse Expenses, each as defined below. Building Expenses shall include any and all rent, charges and expenses due under the Master Lease, real estate taxes and fees, rents or assessments levied upon Landlord with respect to the Property from any governmental or taxing authority whether general or specific, ordinary or extraordinary, foreseen or unforeseen and any personal property, sales, rental, use and occupancy tax levied upon Landlord. Expenses shall include the cost of operating, managing and maintaining the Property, including without limitation, janitorial, snow removal, insurance, maintenance of building exteriors, security, common area utilities, common fire protection mains and pumps, landscaping, clean-up, management fees, and fees incurred for tax appeal or insurance purposes, provided that any Expenses that are applicable to the operation or
maintenance of the Property but not exclusively either the office or the warehouse and ramp shall be included in Building Expenses, any Expenses that are exclusively applicable to the operation or maintenance of the office space shall be included in Office Expenses, and any Expenses that are exclusively applicable to the operation or maintenance of warehouse or associated ramp areas shall be included in Warehouse Expenses, in each instance without duplication, and allocated accordingly by the Landlord in its sole discretion.

B. Tenant's Proportionate Share is determined by dividing the Rentable Area of the Premises by the Rentable Area of the Property (defined herein) and rounding the quotient to the next highest thousandth. Tenant's Office Share, when applicable, is determined by dividing that portion of the Rentable Area of the Premises that is office space by the Rentable Area of the Office (defined herein) and rounding the quotient to the next highest thousandth. Tenant's Warehouse Share, when applicable, was determined by dividing that portion of the Rentable Area of the Premises that is warehouse space by the Rentable Area of the Warehouse (defined herein) and rounding the quotient to the next highest thousandth. Landlord and Tenant agree that, for purposes of this Lease, the Premises contains the number of square feet specified on the Reference Page (including applicable loss factor in accordance with Section 30) and Tenant's Proportionate Share is the ratio of such building area of the Premises to such building area of the Property, and Tenant's Office Share and Warehouse Share are the ratios of the office or warehouse portions of the Premises to the collective office or warehouse areas of the Property, as applicable. Each December Landlord shall estimate Tenant's Proportionate Share of Building Expenses, Office Share of Office Expenses and Warehouse Share of Warehouse Expenses, as applicable, for the next calendar year. Tenant shall pay such estimated amounts to Landlord in advance in monthly installments as Additional Rent. After each calendar year, Landlord shall furnish a statement setting forth the actual Building Expenses, Office Expenses and Warehouse Expenses and Landlord or Tenant shall make such payment necessary to adjust Tenant's estimated payments to the amount actually due within forty-five (45) days of such statement. Landlord may equitably adjust the Expenses to reflect: 1) direct payments or reimbursements by any tenant to Landlord or a third party; 2) any services or costs which, in Landlords discretion, may benefit or burden only a portion of the tenants in the Property and thus should reasonably only be charged to such tenants; and/or 3) any tax abatement or similar offset or reduction to which Tenant or other tenants are entitled. Partial years shall be equitably prorated.

C. If any capital improvement is made by Landlord to the Premises or Property during any calendar year then the cost of such improvement shall be included in Expenses for the year in which such improvement was made, provided, however, to the extent the cost of such improvement is required to be capitalized in accordance with GAAP, such cost shall be amortized over the useful economic life of such improvement as reasonably estimated by Landlord, and the annual amortization, together with interest thereon at the then Base Rate (defined herein), of such improvement shall be deemed an Operating Expense in each of the years during which such cost of the improvement is amortized. If Landlord makes any capital improvement to the Premises or Property during any calendar year either for the purpose of saving or reducing Expenses (as, for example, a labor saving improvement), then the cost of such improvement shall be included in Expenses for the year in which such improvement was made; provided, however, such cost may be amortized over such period of time as Landlord reasonably estimates such savings or reduction in Expenses will equal the cost of such improvement and the annual amortization, together with interest
thereon at the then Base Rate, of such improvement shall be deemed an Expense in each of the years during which such cost of the improvement is amortized.

D. "Base Rate" shall mean the rate of interest publicly announced from time to time by JP Morgan Bank, N.A., or its successor, as its "prime lending rate" (or such other term as may be used by JP Morgan Bank, N.A., from time to time, for the rate presently referred to as its "prime lending rate").

D. Sections 11 INSURANCE COVERAGES, 12 INSURANCE REQUIREMENTS, 13 WAIVER OF SUBROGATION, 14. LANDLORD INSURANCE REQUIREMENTS of the Lease shall be deleted in their entirety and replaced with the provisions provided on Exhibit "B" attached hereto and made part hereof.

E. Section 26. NOTICES. of the Lease shall be deleted in its entirety and replaced with the following:
Notices shall be sent by hand delivery, overnight courier, or Certified Mail, followed by a copy sent by regular mail, using the following addresses:

If to Tenant:
United Parcel Service Inc.
1400 North Hurstbourne Parkway
Louisville, Kentucky 40223

If to Landlord:
Aero Fl Myers, LLC
201 West Street
Annapolis, Maryland 21401

F. The following shall replace the second paragraph of Section 30 DEFINED TERMS AND MISCELLANEOUS of the Lease:

The term "Rental Area of the Property" shall mean the building area of the Property, less common areas. The term "Rental Area of the Office" shall mean the total area of the office space within the Property, less common areas. The term "Rental Area of the Warehouse" shall mean the total area of the warehouse space within the Property, less common areas. The "Rental Area of the Premises" is deemed to be the square footage set forth on the Reference page. Landlord shall revise the Rental Area of the Property (and therefore Tenant's Proportionate Share of the Property) if there is a change for any reason including sale, casualty or expansion or reduction in the building area. In projects with multiple buildings, Landlord may elect to calculate Expenses on a building basis or a Property-wide basis in which case Tenant's Proportionate Share shall be adjusted equitably. The Premises is not reserved nor is this Lease effective until fully executed by Landlord and Tenant.

G. Section 37 MASTER LEASE of the Lease shall be replaced with the following:

Tenant is cognizant of the terms and conditions of the ground lease for the Property ("Master Lease") by and between Lee County Port Authority ("Master Lessor") and Aero Ft. Myers, LLC dated August 20, 1990, as amended from time-to-time, for the Property, and hereby covenants and agrees that its use and occupancy of the Premises hereunder shall be subject to all the provisions of the Master Lease (as may be amended from time to time) and that it will not do or omit to do or permit to be done or omitted to be done any act or thing over which Tenant has control if such act, thing or omission would constitute a breach of any covenant in the Master Lease on the part of Landlord to be performed and observed. If for any reason, the Master
Lease shall at any time be terminated, Tenant shall not have or make any claim or demand in respect thereof against Landlord. Landlord shall not require the consent of Tenant to amend the Master Lease, Tenant waiving hereby any right it may have to give any such consent or consents, provided that such amendment does not impose any increased material obligation on Tenant or materially diminish any of its rights. Notwithstanding anything to the contrary contained herein, in no event shall the Termination Date of the Lease extend beyond the termination date of the Master Lease. The parties hereto recognize and agree that pursuant to the Master Lease, this Lease shall not become effective until approved by Ground Lessor. In connection with obtaining such approval, Tenant shall provide to Master Lessor such information as may be required by Master Lessor in considering a request for its approval of this Lease.

H. The following shall be added to the Lease as Section 40.

40. **UBTI AND REIT QUALIFICATION.** Landlord and Tenant agree that all rent payable by Tenant to Landlord shall qualify as “rents from real property” within the meaning of both Sections 512(b)(3) and 856(D) of the Internal Revenue Code of 1986, as amended (the “Code”) and the U.S. Department of Treasury Regulations promulgated thereunder (the “Regulations”). In the event that Landlord, in its sole and absolute discretion, determines that there is any risk that all or part of any rent shall not qualify as “rents from real property” for the purposes of Sections 512(b)(3) or 856(d) of the Code and the Regulations promulgated thereunder, Tenant agrees (a) to cooperate with Landlord by entering into such amendment or amendments as Landlord deems necessary to qualify all rents as “rents from real property,” and (b) to permit an assignment of the Lease; provided, however, that any adjustments required pursuant to this Section shall be made so as to produce the equivalent rent (in economic terms) payable prior to such adjustment.

I. Each party warrants that is has not dealt with any broker in connection with this amendment, except as noted below, and indemnifies and holds the other harmless from all liability and expense as a result of any alleged breach of such warranty. Landlord shall be responsible for the commission due to the broker(s) listed below in accordance with, and subject to, the terms of a separate commission agreement between Landlord and such broker(s).

<table>
<thead>
<tr>
<th>Tenant’s Broker:</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord’s Broker:</td>
<td>None</td>
</tr>
</tbody>
</table>

J. Except as otherwise set forth herein, all terms and conditions of the Lease shall remain in full force and effect. The Lease is hereby ratified and confirmed. This Amendment, together with the Lease, constitutes and represents the entire agreement between the parties hereto and supersedes any prior understandings or agreements, written or verbal, between the parties hereto respecting the subject matter herein.

*Signature page to follow*
IN WITNESS WHEREOF, Landlord and Tenant have executed or caused to be executed this Amendment as of the Effective Date.

LANDLORD:
AERO FT. MYERS, LLC,
a Delaware limited liability company
201 West Street
Annapolis, Maryland 21401

By: _______________________

Name: _______________________

Its: _______________________

TENANT:
UNITED PARCEL SERVICE, INC.
an Ohio corporation
1400 North Hurstbourne Parkway
Louisville, Kentucky 40223

By: _______________________

Name: _______________________

Its: _______________________

Witness 1: _______________________
Printed Name: _______________________
Date: _______________________

Witness 2: _______________________
Printed Name: _______________________
Date: ______________________
Exhibit “A”
Premises

15960 Chamberlin Parkway, Suite W_01, Fort Myers, FL 33913
Southwest Florida International Airport

- 1 Airside Overhead Doors
- 1 Dock High Overhead Doors

Total: 2,400 SF | Office: 1,050 SF
EXHIBIT "B"
Tenant Insurance

11. **INSURANCE COVERAGE.** The Tenant agrees that it shall, at all times during the Term of this Lease, and at the Tenant's sole cost and expense, purchase or cause to be purchased on its behalf, and maintain in full force and effect, the following minimum insurance:

1) **Aviation General Liability Insurance,** with a minimum limit of not less than ten million dollars ($10,000,000) per occurrence. Insurance shall be placed with licensed aviation insurers and cover the following:

(a) **Premises, Property, and Operations Liability** – to cover liability for third-party bodily injury, personal injury, advertising injury, and property damage liability arising out of the use, occupancy or maintenance of any portion of the Premises or Property. Such coverage shall also include damage to premises rented to you and an exception to any pollution exclusion for damage or injury arising out of heat, smoke or fumes from a hostile fire, Endorsement AVN46B titled "Noise and Pollution and Other Perils Exclusion Clause", and host liquor liability.

(b) **Products and Completed Operations Legal Liability** – to cover liability for the storage, sale and distribution of aviation products and services of all manner and description, including but not limited to the storage, sale and distribution of aviation fuel and oil, component parts, maintenance, repair and overhaul of airframes and aero engines.

(c) **Airside Automobile Liability** – to cover liability for the use of all license-plated and non-license-plated vehicles, motorized or non-motorized, on that portion of an airport known and defined herein as Airside (which may be limited to $25,000,000 per accident).

Airside is defined as that portion of an airport that is designated by the airport as an aircraft maneuvering or aircraft movement area, and which may be used for the parking or servicing of aircraft, the loading or unloading of air cargo, the enplaning or deplaning of aircraft passengers, or the transit of passengers or air cargo between the aircraft and airport buildings such as air terminal buildings, hangars, freight warehouses, or from non-airside areas. Airport areas covered include the apron, taxiways and runways, terminals and other buildings, past the perimeter fence, through the security gate, or as otherwise defined by the airport.

2) **Automobile Liability Insurance** – to cover liability for the ownership, maintenance and use of all owned, hired, or non-owned vehicles, for a combined single limit for bodily injury and property damage in an amount of not less than ten million dollars ($10,000,000) per accident. Policy shall contain the ISO Endorsement CA 99 48 ("Pollution Liability – Broadened Coverage For Covered Autos – Business Auto, Motor Carrier And Truckers Coverage Forms").

If applicable, policies shall include an endorsement (Form MCS-90) or surety bond (Form MSC-82) filed with FMCSA in compliance with 49 CFR 387 for auto coverage and/or Truckers or Motor Carrier coverage form.

In the event the Tenant does not own any automobiles, the Tenant shall maintain only hired and non-owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Automobile Coverage form, covering bodily injury and property damage caused by a vehicle that may be used in connection with the Tenant's business.
3) **Workers Compensation** coverage in an amount not less than statutory requirements. If exempt from Workers' Compensation coverage, Tenant must provide a copy of the State Workers' Compensation exemption. **Employer's Liability Insurance** in an amount of not less than:

- Bodily injury by accident – $1,000,000 each accident
- Bodily injury by disease – $1,000,000 policy limit
- Bodily injury by disease – $1,000,000 each employee

4) **Pollution Legal Liability Insurance** – to cover liability for environmental damage, including onsite and offsite third party property damage, personal injury, and bodily injury liability arising out of, but not limited to Tenant’s operations, including the leakage of fuel, oil, or other deleterious substances from any underground or above ground storage tanks owned or operated by the Tenant, or from vehicles owned, operated or serviced by Tenant or Tenant’s invitees, on to the leased Premises or any adjacent Premises whether such leak is 'sudden and accidental' or 'occurs over time'. Coverage is to include: defense costs, remediation/restoration costs, transportation, fines and penalties, contractual liability sufficient to address the indemnification clauses in this Lease and non-owned disposal site liability for waste or materials deposited offsite. Such policy shall also insure pollution hazards from cargo on the Leased Premises and Property. Policy shall have minimum limits of not less than three million dollars ($3,000,000) per claim and five million dollars ($5,000,000) annual aggregate, and with an Extended Reporting Period equal to the applicable statute of repose, in any event not less than five (5) years.

5) **Property Insurance – Special Form Causes of Loss (aka All Risks Form)** including the perils of Windstorm, Flood, Terrorism (coverage may be provided by TRIA coverage under the Property Insurance policy or by a separate Terrorism policy) and Earthquake in an amount not less than the full replacement cost for all personal property of Tenant and shall cover Alterations or Tenant Improvements, and contents of all manner and description including furniture, fixtures, and equipment owned or non-owned, and considered to be in the care, custody, and control of the Tenant. Furthermore, this insurance shall cover not less than twelve (12) months of Business Interruption, including Extra Expense, and Rent payable to the Landlord in the event of partial or total physical loss or damage to the Premises. Tenant must maintain plate glass insurance coverage against breakage of plate glass in the Premises. Tenant may self-insure for plate glass.

6) **Equipment Breakdown Insurance (aka Boiler and Machinery)**, if applicable, against loss or damage from an accident from Tenant installed or above building standard equipment installed for Tenant’s use in the Premises for full replacement cost and to cover loss or damage to the Premises owned, leased, or operated by the Tenant, or for which the Tenant is responsible to arrange appropriate insurance pursuant to this agreement. Coverage may be provided under the Property Insurance policy.

**Limits/Coverage:** In order to meet the required minimum limits of the Liability Insurance, it is permissible for the Tenant to combine an umbrella liability policy with the primary liability policy, at the discretion of Tenant. The limits and type of insurance coverage required are minimums only and do not impose a limitation on the scope of the Indemnity (by the Tenant in favor of the Landlord), and nothing herein shall preclude the Tenant from obtaining higher limits and other forms of insurance as would be appropriate to the Tenant’s operational activities and risks of loss. If the Tenant maintains higher limits than the minimums required herein, the Landlord shall be entitled to coverage for the higher limits maintained by the Tenant; to the extent of Tenant’s Indemnification obligation. Any such insurance maintained by the Tenant with limits of liability in excess of the minimum limits of liability required to be maintained by the Tenant pursuant to this Lease shall be primary and non-contributing with any insurance which may be carried by or available to the Landlord.
12. **INSURANCE REQUIREMENTS.**

1) **Extensions of Coverage.** The insurance policies that the Tenant is required to purchase and maintain pursuant to this Lease shall include the following extensions of coverage:

(a) **Contractual Liability** under the Auto and Aviation Liability Insurance policies. Such policies shall accept and insure the indemnification obligations of Tenant under this Lease but only to the extent of the coverage afforded by such policy.

(b) **Additional Insured** Status: All policies of liability insurance (except Workers’ Compensation/Employer’s Liability, Automobile Liability and Cargo Legal Liability) and all renewals thereof shall be endorsed to name the Landlord and its asset manager, property manager as well as their respective owners, subsidiaries, affiliated entities, members, partners, officers, directors, shareholders, consultants, employees, servants, agents, representatives and designees, and any other parties designated by the Landlord (including government agencies or departments, any investment manager, lender, ground lessor or aviation authority as required) as an Additional Insured, with respect to liability arising out of Tenant’s operations, maintenance or use of the Premises or Property, as well as all liability for which Tenant indemnifies and holds Landlord harmless in accordance with the indemnification provision herein.

(c) The required Aviation Liability policy shall provide **cross liability** coverage or a **breach of warranty** endorsement causing the policy to continue to protect the financial interest of the Landlord even when the insured breaches a condition, thereby voiding coverage. Any loss recoveries under this clause are payable only to the Landlord.

(d) The above policies requiring additional insured status shall be **primary** to and will seek no contribution from all insurance available to Landlord and other Additional Insureds, with their insurance being excess, secondary and **non-contributing**.

(c) **Loss Payee** Status: All policies of property and boiler and machinery insurance shall name the Landlord and any other parties with a financial interest in the Premises, as designated by the Landlord (including government agencies or departments, any investment manager, asset manager, property manager, ground lessor, aviation authority, or mortgagee) as a Loss Payee with respect to the financial interest of such parties in the Premises, and all improvements or betterments, if any, thereto.

(f) **Notice of Cancellation:** Each policy of insurance shall be endorsed to provide that the policy cannot be cancelled with less than thirty (30) days prior written notice to the Landlord (10 days for non-payment of premium and 7 days or less as is customary in respect of war and allied perils). Tenant shall be responsible to provide same thirty (30) days prior written notice to Landlord if its policies are not renewed or are reduced or materially changed below the scope of coverage or the limits required herein.

2) **Deductibles:** All deductibles, if any, selected by Tenant shall be the sole responsibility of Tenant. Losses not covered by reason of such deductibles shall be the sole responsibility of the Tenant.

3) **Other Conditions of Insurance**
(a) All policies of insurance required under this Section and all renewals thereof shall be issued by insurers approved to do business in the jurisdiction of the Leased Premises, and shall be rated A- VII or better by current edition of Best's Key Rating Guide. In the event such rating is not available, issuing insurers shall maintain equivalent financial strength and sizes.

(b) The Tenant shall deliver or cause to be delivered to the Landlord, Certificates of Insurance, including copies of endorsements such as Additional Insured endorsements and Notice of Cancellation endorsements, to reflect and confirm all coverage required herein, at least ten (10) days before the Date of Beneficial Occupancy, and again during the term of the Lease, at least ten (10) days prior to the expiration of each policy of insurance required herein. If the Tenant fails to insure or fails to furnish any such insurance certificate, the Landlord shall have the right to, but shall not be required to do so, arrange or cause to be arranged, insurance as required herein, and the Tenant shall be required to pay to the Landlord on written demand as Additional Rent, all insurance premiums paid by the Landlord.

(c) Under no circumstances shall delivery to and inspection by Landlord of any certificates of insurance, or other proof of existence of the coverages, release the Tenant of its obligations to maintain insurance in strict compliance with these provisions, relieve the Tenant from liability under this Lease or constitute a waiver in favor of the Tenant of any of Landlord's rights.

(d) The Landlord may, at any time but shall not be obliged to do so, amend the insurance coverage requirements herein due to (a.) changed circumstances or information not previously known to the Landlord, and which may pose a material risk or material change in risk or (b.) as required by the Landlord's lender. The Tenant shall, within thirty (30) days of notice from the Landlord, deliver or cause to be delivered to the Landlord, appropriate certificates of insurance to reflect and confirm that coverage has been arranged pursuant to the amendment of the insurance requirements by the Landlord.

4. INSURANCE DURING TENANT IMPROVEMENTS

(a) Tenant shall not make modifications to the Premises or Property without receiving prior written consent from the Landlord. At any time during construction and while any work in connection with any alterations, additions or improvements is in progress with respect to the Leased Premises, Tenant shall maintain coverage required herein, in addition to builder's risk broad form insurance coverage (including loss of income and "soft costs") for not less than the completed value of the work then being performed by Tenant. Such insurance shall include coverage for items stored off site and items in transit for an amount sufficient to cover fully any loss. Landlord and other parties designated by Landlord, shall be named as loss payees as respects their interest in the Leased Premises and any such alterations, additions, or other improvements. Such coverage maybe satisfied by a separate policy or included in a property insurance policy.

(b) Tenant shall include all contractors and subcontractors as insureds under its policies or shall be responsible for verifying the insurance maintained by each contractor and subcontractor. Tenant shall cause contractors and subcontractors to be subject to all of the insurance coverages and requirements stated herein, including naming the Landlord, the Property Manager, and other parties designated by Landlord, as additional insureds via endorsement CG 20 38. Tenant shall cause Tenant's contractors
and subcontractors to provide evidence of property insurance coverage for their tools and equipment in an amount equal to the replacement cost of all tools and equipment brought onto the Premises. Such property insurance policy shall contain a waiver of subrogation against Landlord, and other additional insureds.

(c) Failure of the Tenant, contractors or subcontractors to purchase and/or maintain any required insurance shall not relieve them from any liability or indemnification requirements.

(d) Tenant shall require contractors and subcontractors to provide the same indemnification to Landlord as provided by Tenant to Landlord in this Lease.

(e) All certificates of insurance shall be received and approved by the Landlord before work can commence and upon any renewal of each policy.

Under no circumstances shall delivery to and inspection by Landlord of any certificate or other proof of existence of the coverages release the Tenant, contractors or subcontractors of its obligations to maintain insurance in strict compliance with these provisions or constitute a waiver in favour of the Tenant, contractors or subcontractors of any of Landlord’s rights.

13. **MUTUAL RELEASE AND WAIVER OF SUBROGATION**

Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant mutually agree to release one another (and their respective officers, directors, trustees, partners, joint ventures, employees or agents) from any and all claims with respect to any loss covered by (or which should have been covered by) property insurance and equipment breakdown insurance as required herein (except for when a party is seeking recovery for loss occasioned by the gross negligence or willful misconduct of the other party). They further mutually agree that their respective insurance companies shall have no right of subrogation against the other (and their respective officers, directors, trustees, partners, joint ventures, employees or agents) on account thereof. Landlord and Tenant shall procure from each of the insurers under all policies of property insurance and equipment breakdown insurance now or hereafter carried by such party or on behalf of such party, a waiver of all rights of subrogation which the insurer might otherwise, if at all, have to any claims of either party against the other as required herein or ensure policies of property insurance and equipment breakdown insurance grant the permission to waive its rights of recovery. Landlord’s waiver under this section shall not apply to Landlord’s right to seek compensation from the Tenant for any deductible amounts under Landlord’s property insurance and equipment breakdown insurance. This release and waiver remains effective despite either party’s failure to obtain insurance. If either party fails to obtain insurance, it bears the full risk of its own loss. If Tenant fails to procure such a waiver, it will pay the Landlord as liquidated damages payable as Additional Rent on demand all moneys to which any subrogator hereunder becomes entitled and the cost of any legal defence of any claim for subrogation.

14. **LANDLORD INSURANCE REQUIREMENTS.** Landlord shall, at all times during the term of this Lease, secure and maintain:

1) **Causes of Loss – Special Form policy of Property Insurance,** which may include the perils of Windstorm, Flood, Terrorism (coverage may be provided by TRIA coverage under the Property Insurance policy or by a separate Terrorism policy) and Earthquake, in an amount not less than the full replacement cost of the Property. In addition, Landlord may secure and maintain Equipment Breakdown Insurance, Business Interruption Insurance and any other insurance coverage required to be maintained by any mortgagee of the Property. If the annual cost to Landlord for such property or rental income insurance exceeds the standard
rates because of the nature of Tenant’s operations, Tenant shall, upon the receipt of appropriate invoices, reimburse Landlord for such increased cost. Landlord shall not be obligated to insure any furniture, equipment, trade fixture, machinery, goods, or supplies which Tenant may keep or maintain in the Premises or any alteration, addition or improvement which Tenant may make upon the Premises.

2) **Aviation Liability Insurance, including Commercial General Liability or equivalent**, with limits not less than ten million dollars ($10,000,000) per occurrence and aggregate. Such insurance shall be in addition to, and not in lieu of, insurance required to be maintained by Tenant. Tenant shall not be named as an additional insured on any policy of liability insurance maintained by Landlord.
# Requested Motion/Purpose
Request Board approve a "Nonparticipating Airline Airport Use Permit" agreement at Southwest Florida International Airport with Swift Air, L.L.C.

# Funding Source
n/a

# Term
Month to month, beginning October 20, 2019

# What Action Accomplishes
Specifies terms and conditions for the airline’s use of facilities and equipment at RSW

## Agenda
- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- ADMINISTRATIVE

## Requestor of Information
(All Requests)

**NAME:** Brian McGonagle
**DIV.:** Administration

## Background
Swift Air, L.L.C. will begin operating flights between Southwest Florida International Airport and Havana, Cuba for charter operator Cubazul Air Charter Inc. As requested, Swift Air has signed the latest version of the Authority’s standard "Nonparticipating Airline Airport Use Permit."

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

### Attachments:
- Contract Summary
- Proposed Agreement

## Recommended Approval

<table>
<thead>
<tr>
<th>Deputy Exec Director</th>
<th>Communications and Marketing</th>
<th>Other</th>
<th>Finance</th>
<th>Port Attorney</th>
<th>Interim Executive Director</th>
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<tbody>
<tr>
<td>Benjamin R. Siegel</td>
<td>Victoria B. Moreland</td>
<td>N/A</td>
<td>Brian W. McGonagle</td>
<td>Gregory S. Hagen</td>
<td>Benjamin R. Siegel</td>
</tr>
</tbody>
</table>

## Special Management Committee Recommendation
- Approved
- Approved as AMENDED
- Denied
- Other

## Port Authority Action
- Approved
- Approved as AMENDED
- Denied
- Deferred to
- Other
Contract Summary

Type of Agreement: Nonparticipating Airline Airport Use Permit

Carrier: Swift Air, L.L.C.
     2406 South 24th Street, Suite E-102
     Phoenix, AZ 85034

Premises: allows carrier to use certain ramp space, equipment, and terminal facilities at RSW

Allowed Use(s): airline passenger and cargo service

Term: begins October 20, 2019; 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.

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 nonpassengers)

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 nonpassengers)

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 nonpassengers)

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 __31__
day of __October___, 2019__, 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 SWIFT AIR, L.L.C., an
Arizona limited liability company, maintaining offices at 2406 South 24th Street, Suite E-102,
Phoenix, AZ 85034 ("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 October 20, 2019, 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 $50,000.00, 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.

(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;
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 nondiscrimination 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.

[remainder of page intentionally left blank]
IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this agreement on the date first above written.

SWIFT AIR, L.L.C.
(Carrier)

By: New Swift Air Holdings, L.L.C., a Delaware limited liability company, as Manager

By: 
Title: CEO
Date: 10/31/2017

WITNESSED:

Witness: ___________________________
Print Name: James Cunningham
Date: 10/31/2017

Witness: ___________________________
Print Name: Hayne Landreth
Date: 10/31/2017

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

- 22 -
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:

<table>
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<tr>
<th>TICKET COUNTER POSITIONS</th>
<th>TIME</th>
<th>GATE TIME</th>
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<tr>
<td><strong>DOMESTIC</strong></td>
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<td></td>
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<tr>
<td>Narrow Body Aircraft</td>
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<tr>
<td>Wide Body Aircraft</td>
<td>4</td>
<td>3.0 hrs</td>
</tr>
</tbody>
</table>

| **INTERNATIONAL**        |      |           |
| 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 A, Page 4 of 4
## EXHIBIT B
NON-PARTICIPATING AIRPORT FACILITY CHARGE (TERMINAL USE FEES)
(EFFECTIVE FOR 10/01/2019)

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<td>DEPARTURE</td>
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### EXHIBIT B (EFFECTIVE FOR 10/01/2019)
(Continued)

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<th>STANDARD LANDING WEIGHT (LBS.)</th>
<th>AVG. # SEATS</th>
<th>ARRIVAL</th>
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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:

<table>
<thead>
<tr>
<th>Number of Seats*</th>
<th>Arrival</th>
<th>Departure</th>
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<tr>
<td>0-10</td>
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<tr>
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<tr>
<td>41-50</td>
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</tr>
</tbody>
</table>

* 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, 2019

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 11:59 PM, 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)................................................................. $0.50*
*maximum of $100.00 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

### 1. REQUESTED MOTION/PURPOSE:
Request Board approve a “First Amendment to Lease of Terminal Space at Southwest Florida International Airport” with Airline Tech Reps, LLC.

### 2. FUNDING SOURCE:
**n/a**

### 3. TERM:
Month-to-month, beginning December 1, 2019

### 4. WHAT ACTION ACCOMPLISHES:
Amends the Lease to allow Airline Tech Reps, LLC to lease additional space within the terminal building.

### 5. CATEGORY:
7. Consent Agenda

### 6. ASMC MEETING DATE:
12/17/2019

### 7. BoPC MEETING DATE:
1/16/2020

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

### 9. REQUESTOR OF INFORMATION:
(ALL REQUESTS)
- **NAME** Brian McGonagle
- **DIV.** Administration

### 10. BACKGROUND:
Airline Tech Reps, LLC (“ATR”) provides airliner maintenance and repair services to airlines at Southwest Florida International Airport, pursuant to a “Permit Agreement for Airliner Maintenance and Repair” dated January 5, 2017. ATR also leases approximately 192-square-feet of operations space (on the first floor of the terminal building), pursuant to a “Lease of Terminal Space at Southwest Florida International Airport” dated May 3, 2018. ATR now desires to lease additional operations space.

The proposed First Amendment to Lease of Terminal Space would allow ATR to lease an adjoining room containing 148-square-feet, for a combined total of approximately 340-square-feet, effective December 1, 2019. The term of the Lease will remain month-to-month and rent will increase proportionally, from $1,945.44 per month to $3,445.05 per month. All other terms of the Lease will remain unchanged.

### Attachments:
1. Contract Summary
2. Proposed First Amendment to Lease of Terminal Space

### 11. RECOMMENDED APPROVAL

<table>
<thead>
<tr>
<th>DEPUTY EXEC DIRECTOR</th>
<th>COMMUNICATIONS AND MARKETING</th>
<th>OTHER</th>
<th>FINANCE</th>
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<th>INTERIM EXECUTIVE DIRECTOR</th>
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<td>N/A</td>
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<td>Gregory S. Hagen</td>
<td>Benjamin R. Siegel</td>
</tr>
</tbody>
</table>

### 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**
*(Includes Effects of Proposed First Amendment)*

Tenant: Airline Tech Reps, LLC  
2000 N.E. Jensen Beach Boulevard  
Jensen Beach, FL 34957

Leased Premises: Room 1D41001 (192 square feet), located on the first floor of the RSW terminal building *(adds Room 1D41002, which is 148 square feet, effective December 1, 2019, for a total of 340 square feet)*

Allowed Use(s): office or storage space related to its permitted operations at the Airport

Term of Lease: term commences April 1, 2018, and will continue month-to-month thereafter

Rents and Fees: Currently $1,945.44; subject to change effective October 1, 2020, and not more frequently than annually thereafter, provided the Authority gives at least 30 days advance written notice of such change *(effective December 1, 2019, monthly rent increases to $3,445.05)*

Security/Perf. Guaranty: $12,405.24

Insurance Requirements: Lessee must keep in force insurance required by its Permit Agreement

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Note: This page is intended as a general summary only, for ease of review, and is not a part of the contract. In the event of any conflict between this page and the proposed contract, the contract (being more precise) will prevail.
FIRST AMENDMENT
TO
LEASE OF TERMINAL SPACE
AT
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

THIS FIRST AMENDMENT is made and entered into this _____ day of
_____________________, 2020, by and between LEE COUNTY PORT AUTHORITY, a political subdivision of the State of Florida (herein referred to as "Authority") with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913, and AIRLINE TECH REPS, LLC, a Texas limited liability company (herein referred to as "Lessee"), with offices at 2000 N.E. Jensen Beach Boulevard, Jensen Beach, Florida 34957.

Background

The Authority operates Southwest Florida International Airport, located at Fort Myers, in Lee County, Florida (the "Airport"). Authority and Lessee have entered into a lease agreement entitled “Lease of Terminal Space at Southwest Florida International Airport” dated May 3, 2018 (the “Lease”), covering certain space in the Airport’s terminal building. Lessee desires to lease additional space to on a month-to-month basis.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby mutually agree to modify said Lease, effective as of December 1, 2019, as follows:

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

Room Numbers 1D41001 and 1D41002, comprising a combined total of approximately 340 square feet, located on the first floor, below Concourse D, as shown on Revised Exhibit A attached hereto.

2. The monthly rent set forth in the first sentence of Article 4 ("Rent") of the Lease is increased from $1,826.72 per month to $3,445.33 per month.
3. “Exhibit A” of the Lease shall be deleted and replaced with the attached “Revised Exhibit A.”

4. All other provisions of the Lease shall remain unchanged and in full force.

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

AIRLITE TECH REPS, LLC
(Lessee)

By: ________________________________

Print Name: Mark Smith
Title: President
Date: 11/21/19

Witnessed by: ________________________________
Print Name: Christina Seifert

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, County Clerk

By: ________________________________
Deputy Clerk

By: ________________________________
Port Authority Attorney
Leased Space Room # 1D41001 and Room # 1D41002
(340 SF Approx.)
On November 8, 1999, the Authority leased a 1.53-acre parcel at Page Field to Gulfshore Helicopters, Inc. pursuant to a “Land Lease for Construction of a Hangar Building at Page Field General Aviation Airport.” The parcel has a tenant-constructed hangar facility of approximately 10,000 square feet built in 2000. The tenant’s leasehold interest was assigned twice and is currently held by ALH Aviation, LLC (“ALH”).

ALH has proposed to build a second hangar on the leasehold. To facilitate this proposal, the Authority and ALH, on March 8, 2018, entered into a “First Amendment” to the lease, which:

1. Expanded the leased premises by approximately 16,000 square feet to accommodate the new hangar and associated parking and storm water management;
2. Extended the lease term by five years, to January 31, 2025, provided ALH has begun and is continuing construction on the new hangar by January 31, 2020;
3. Extended the lease term further, to January 31, 2040 (and granted ALH two options to extend by five years each, i.e. to January 31, 2050), provided the planned second hangar is completed by January 31, 2025; and
4. Provided for an increase in rent in 2030 based on an appraisal of the existing building. If the rent increase would be unacceptable to ALH, ALH will have the option to delete the existing building and associated land from the lease at that time.

ALH’s proposed expansion has been delayed, but they would still like to move forward. This proposed second amendment will serve to:

11. RECOMMENDED APPROVAL

<table>
<thead>
<tr>
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</tbody>
</table>

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:
- APPROVED
- APPROVED as AMENDED
- DENIED
- OTHER

13. PORT AUTHORITY ACTION:
- APPROVED
- APPROVED as AMENDED
- DENIED
- DEFERRED to
- OTHER
(1) Extend the lease from January 31, 2020, to January 31, 2021.
(2) Extend ALH’s deadline to obtain required permits and commence construction of the second hangar building, from January 31, 2020 to January 31, 2021.
(3) Provide that, if ALH meets the extended deadline, and also completes the second hangar by January 31, 2025, the term will extend to the earlier of January 31, 2051, or thirty (30) years (including extension options) from the second hangar’s Date of Beneficial Occupancy.
(4) Provide that if ALH does not meet the extended deadline, then, effective February 1, 2021, the term will become month-to-month, and the rent will increase to $9,166.67 per month (to reflect the value of the existing hangar).

Attachments:
1. Contract summary
2. Proposed second amendment
Lease Summary
(Includes Effects of Proposed Second Amendment)

Tenant: ALH Aviation, LLC
325 Danley Drive
Fort Myers, FL 33907

Leased Premises: a parcel of land at Page Field, containing approximately 1.90 acres

Allowed Use(s): helicopter storage, flight training, sightseeing flights, 14 CFR Part 135 charters, aerial photography, and aircraft maintenance and repair services

Term of Lease: Began February 1, 2000, and continues until January 31, 2020 [being amended to January 31, 2021]. If tenant has begun construction of its planned second hangar by January 31, 2020 [being amended to January 31, 2021] then the term of the lease will continue until January 31, 2025. If tenant has completed construction on its planned second hangar by January 31, 2025, then the term will be extended to January 31, 2040 [being amended to the earlier of January 31, 2041, or 20 years after the second hangar’s DBO] and the tenant will have two options to extend the term by five years each.

Rents and Fees: $2,024.93 per month, subject to CPI adjustments; rent will also be adjusted to include market rental value of the existing hangar effective February 1, 2030, unless tenant exercises its option to delete the “Option to Delete Area” (i.e. releases the existing hangar to LCPA)

[Being added: If tenant does not begin construction of the second hangar by January 31, 2021, then, effective February 1, 2021, the term will be month to month, and rent will increase to $9,166.67 per month.]

Security/Perf. Guaranty: $3,357.00

Insurance Requirements: $1 million CGL (including premises and operations, contractual, and comprehensive automobile); property insurance, including fire and extended coverages, for all risks of physical loss or damage to the premises and improvements, for full replacement value; 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.
This agreement (the "Second Amendment") is made and entered into this _____ day of ______________, 20__, by and between

LEE COUNTY PORT AUTHORITY, a special district and political subdivision of the State of Florida, with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida 33913 (the "Authority"), and ALH AVIATION, LLC, a Florida limited liability company with principal offices located at 325 Danley Drive, Fort Myers, Florida 33907 ("Lessee").

Background

Lee County, a political subdivision of the State of Florida, owns an airport known as Page Field, in Lee County, Florida (the "Airport"). Pursuant to Chapter 63-1541, Laws of Florida, and Lee County Ordinance 01-14, as amended, Lee County has vested the Authority with the power to lease premises and facilities on the Airport and grant related rights and privileges.

The Authority and Lessee’s predecessor in interest, Gulfshore Helicopters, Inc., entered into a lease agreement entitled "Land Lease for Construction of a Hangar Building at Page Field General Aviation Airport," dated November 8, 1999, (herein the "Lease"). Subsequently, the leasehold interest granted therein was assigned by Gulfshore Helicopters, Inc. to Gulfshore Maintenance, Inc., thence to A & C Aviation, Inc., and thence to the current lessee, ALH Aviation, LLC. The Lease was subsequently amended via a "First Amendment to November 9, 1999,
Land Lease with ALH Aviation, LLC" (herein the "First Amendment") dated March 8, 2018.

Lessee requires additional time to obtain the necessary permits and commence construction of a second hangar building. Accordingly, the parties desire to further amend the Lease to extend the Lease term and to adjust the deadline for Lessee to begin construction of a second hangar.

NOW THEREFORE, in consideration of the mutual promises herein, the undersigned parties agree to modify the Lease as follows:

1. Amendment of Lease Term.

Section 2.1 of the Lease is amended such that the term of the Lease is extended to January 31, 2021.

2. Extension of time to obtain permits and commence construction of second hangar.

Item 3 of the First Amendment (entitled "Construction of second hangar, extension of initial term, and options to extend") is hereby amended such that, in the second paragraph, the deadline for Lessee’s obtainment of required permits and commencement of construction of the second hangar building on the leased premises is changed from January 31, 2020, to January 31, 2021. Also, in the third paragraph, certain dates are adjusted. Accordingly, said second and third paragraphs shall now read:

“If Lessee obtains the required permits and commences construction of a second hangar building on the leased premises,
containing at least 20,000 square feet of floor area, prior to the scheduled expiration of the initial term of the Lease on January 31, 2021, and continues such construction in a reasonable manner thereafter, the initial term of the Lease will be extended to January 31, 2025.

If Lessee substantially completes, and obtains a certificate of occupancy from Lee County for, said second hangar building on the leased premises, prior to January 31, 2025, then the following three provisions, numbered (1), (2), and (3), will apply:

1) the initial term of the Lease will be further extended to the earlier of:
   a) the date that is twenty (20) years after the "Date of Beneficial Occupancy" of said second hangar building; or
   b) January 31, 2041;

2) effective February 1, 2030 (in addition to and in lieu of any other adjustments and CPI escalations provided for in the Lease, as amended), the then-current monthly rent will be increased to include the appraised market rental value, as determined by a certified general appraiser retained by the Authority, of the "fixed improvements" already constructed and existing on the leased premises as of January 1, 2018 ("fixed improvements" means any and all improvements in the nature of realty, including but not necessarily limited to the hangar building of approximately 10,000 square feet, and pavement, fencing, and light fixtures, and excludes only the land itself, trade fixtures, and personal property); provided, however, that Authority will give Lessee at least thirty (30) days advance written notice of said rent increase, and if the amount of said rent increase is not acceptable to Lessee then Lessee may, at its option, delete from Lessee's leasehold said hangar building and that portion of the premises which is depicted as "Option to Delete Area" on Exhibit C attached hereto (containing approximately 35,232 square feet), by providing written notice to Authority prior to February 1, 2030, and if Lessee duly provides the Authority such notice of Lessee's election to delete the "Option to Delete Area" from the leasehold, then, effective February 1, 2030: (i) in lieu of said rent increase, the then-current monthly rent will be decreased by 42.6 percent, and (ii) the "Option to Delete Area" will be deleted from the
leasehold, and all improvements thereon (including but not limited to the hangar building) will automatically revert to Authority; and

(3) Lessee will have:

(a) an option to extend the term of the Lease by five (5) years (provided that the lease has not been terminated and that Lessee is not then in default), by giving the Authority written notice, no earlier than January 31, 2040, and no later than November 30, 2040, of Lessee’s intent to exercise this option, sent in the manner set forth in Section 21.1 of the Lease to the Authority’s current address of:

Executive Director  
Lee County Port Authority  
11000 Terminal Access Road, Suite 8671  
Fort Myers, FL 33913

and

(b) if Lessee exercises the first option to extend the term of the Lease, as set forth above, then 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 (sent to the same address and in the same manner set forth above for the first option) no earlier than January 31, 2045, and no later than November 30, 2045, of Lessee’s intent to exercise this second option.

Pursuant to item (1) above, if Lessee is entitled to and does validly exercise both of these five-year extension options, the term of the lease will ultimately expire on the earlier of:

(a) the date that is thirty (30) years after the “Date of Beneficial Occupancy” of said second hangar building; or

(b) January 31, 2051."
3. **Status of lease, and increase in rent, if required**

permits are not obtained or construction is not
commenced on second hangar by January 31, 2021.

If Lessee does not obtain all required permits for, and
commence construction of, a second hangar building on the leased
premises, containing at least 20,000 square feet of floor area,
prior to the expiration of the initial term of the Lease on
January 31, 2021, then effective February 1, 2021:

(A) The term of the Lease will continue on a month-to-month
basis, unless or until terminated by either party
giving the other thirty (30) days advance written
notice thereof; and

(B) The monthly rent will increase by the amount of
$9,166.67.

4. **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.

**ALH AVIATION, LLC**
(Lessee)

By:  
As its: Manager

Date: **DEC, 09, 2019**

WITNESSED BY:

Witness:  
Print name:  

Witness:  
Print name:  

Edward Moran
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
# BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY

## 1. REQUESTED MOTION/PURPOSE:
Request Board consent to a proposed amendment to the Fuel System Interline Agreement

## 2. FUNDING SOURCE:
n/a

## 3. TERM:
until September 30, 2031

## 4. WHAT ACTION ACCOMPLISHES:
allows a proposed amendment of the "Fuel System Interline Agreement" among the tenant of the airport fuel system (RSW Fuel Company LLC) and its member airlines

## 5. CATEGORY:
9. Consent Agenda

## 6. ASMC MEETING DATE:
12/17/2019

## 7. BoPC MEETING DATE:
1/16/2020

## 8. AGENDA:
- [X] CEREMONIAL/PUBLIC PRESENTATION
- [ ] CONSENT
- [ ] ADMINISTRATIVE

## 9. REQUESTOR OF INFORMATION:
(ALL REQUESTS)
- NAME: Brian McGonagle
- DIV: Administration

## 10. BACKGROUND:
RSW Fuel Company LLC (the “LLC”) leases the airport’s airline fuel system under a “Fuel System Agreement for Southwest Florida International Airport” with the Authority dated November 14, 2011. The LLC is owned and controlled by a group of “Member” airlines, which each serve the airport. The LLC’s current members include Air Canada, American, Delta, JetBlue, Southwest, Spirit and United. Airlines that are not Members can opt to join and become Members, or can use the system as non-Members, which are subject to somewhat higher costs.

Pursuant to the Fuel System Agreement, the LLC and its individual “Members” entered into an “Interline Agreement” dated August 10, 2011. The Interline Agreement sets forth among other things, the methodology used by the LLC to allocate, among those Member airlines (referred to in the Interline Agreement as “Contracting Airlines”), the LLC’s costs associated with the maintenance, management and operation of the fuel system. Currently, the Interline Agreement allocates 100% of the system’s net costs among the Contracting Airlines monthly, in proportion to each Contracting Airline’s fuel gallonage. The LLC now desires to change the cost allocation such that 10% of the net monthly costs are allocated among the Contracting Airlines equally (i.e. based on the number of Contracting Airlines), and the remaining 90% are allocated according to each Contracting Airline’s gallonage.

The LLC also desires to amend the Interline Agreement to replace the defined term “Associate Airline” with a newly defined term called “Affiliate Airline.” This change would serve to expand the group of airlines a Member can extend its lower “Member” pricing to, from airlines that are wholly owned by the Member or its parent, to airlines that operate flights on the Member’s behalf (provided that the Member guarantees payment).

## 11. RECOMMENDED APPROVAL

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<thead>
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<th>FINANCE</th>
<th>PORT ATTORNEY</th>
<th>INTERIM EXECUTIVE DIRECTOR</th>
</tr>
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<tbody>
<tr>
<td>Benjamin R. Siegel</td>
<td>Victoria B. Moreland</td>
<td>N/A</td>
<td>Brian W. McGonagle</td>
<td>Gregory S. Hagen</td>
<td>Benjamin R. Siegel</td>
</tr>
</tbody>
</table>

## 12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:
- APPROVED
- APPROVED as AMENDED
- DENIED
- OTHER

## 13. PORT AUTHORITY ACTION:
- APPROVED
- APPROVED as AMENDED
- DENIED
- DEFERRED to
- OTHER
Any change to the Interline Agreement is “subject to the prior written approval of the Authority, which approval will not be unreasonably withheld or delayed” provided that the change does not conflict with the terms of the Fuel System Agreement.

Approval of this agenda item by the Board of Port Commissioners will constitute consent by the Lee County Port Authority to the proposed amendment of the Fuel System Interline Agreement.

Attachments:
2. Fuel System Interline Agreement among Contracting Airlines and RSW Fuel Company LLC
3. Proposed First Amendment to Fuel System Interline Agreement
CONTRACT SUMMARY

Agreement: Fuel System Agreement for Southwest Florida International Airport

Lessee: RSW Fuel Company LLC
c/o Keith Taylor
Fuel Division
Delta Air Lines, Inc.
11000 Terminal Access Road, Suite 8631
Fort Myers, Florida 33913

Leased Premises: RSW Fuel Storage Area, Fuel System Improvements, and GSE Fueling Facility

Allowed Use(s): receiving, storing, distributing, and dispensing fuel into aircraft and ground service equipment

Term of Lease: October 1, 2011, to 11:59 p.m. on September 30, 2031

Rent: a Flowage Fee (initially 1 cent per gallon, subject to CPI adjustments) applicable to fuel dispensed to Non-Signatory Users; plus

Fuel System Rent of $139,439.12 per month (subject to CPI adjustments); plus

GSE Fueling Facility Rent of $251.76 per month (subject to CPI adjustments); plus

a Fuel System Casualty Insurance Reimbursement Charge.

Insurance: Authority will carry:
Fire and extended coverage risks, as may be insurable at a reasonable premium

Lessee will carry:
Fuel Facilities Aviation Liability: $100 million
Environmental Site Specific Liability: $10 million

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.
FUEL SYSTEM
INTERLINE AGREEMENT
AMONG
CONTRACTING AIRLINES
AND
RSW FUEL COMPANY LLC
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THIS FUEL SYSTEM INTERLINE AGREEMENT (this "Interline Agreement") is
made and entered into as of August 10, 2011, by and among the CONTRACTING AIRLINES
(as defined below) and RSW FUEL COMPANY LLC, a Delaware limited liability company (the
"Company"): 

WHEREAS, the Contracting Airlines have elected to form the Company to lease,
construct or otherwise acquire and to operate and maintain facilities for storage and delivery of
Fuel (as defined below) at the Airport (as defined below), thereby providing reasonable access
subject to the terms of this Interline Agreement, to all Air Carriers (as defined below) and to all
Suppliers (as defined below) wishing to deliver Fuel to Air Carriers at the Airport; and

WHEREAS, the Airport is owned by Lee County, a political subdivision of the State of
Florida, and Lee County has transferred to the Authority (as defined below) the power to operate
the Airport, including the power to lease, license or otherwise provide for the use of land,
property and facilities on the Airport, and to grant rights and privileges related thereto; and

WHEREAS, the Company and the Authority (as defined below) are parties to a Fuel
System Lease (as defined below) pursuant to which the Company leases the Fuel System (as
defined below) at the Airport and may establish standards, and practices and fees relating to the
operation and maintenance of the Fuel System; and

WHEREAS, the Company and the Operator (as defined below) will be parties to a
Operating Agreement (as defined below) pursuant to which the Company will engage the
Operator to maintain and operate certain elements of the Fuel Facility and to provide
maintenance, operation and management services; and

WHEREAS, in connection with the formation of the Company, the Contracting Airlines
desire to enter into this Interline Agreement for the purposes set forth herein.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants
and agreements herein contained, the Contracting Airlines and the Company hereby agree as
follows:

ARTICLE 1
DEFINITIONS

1.1 Defined Terms. As used in this Interline Agreement, the following terms shall
have the meaning set forth below:

"Acceptance Date" means the date on which an Air Carrier becomes an Additional
Contracting Airline.

"Additional Contracting Airline" means an Air Carrier that becomes a Member and a
party to this Interline Agreement, in accordance with Article 11 hereof, after the Effective Date.
“Additional Facilities” means any facilities, other than Special Facilities, that the Fuel Committee determines are required for the Fuel System in accordance with Article 9 hereof.

“Air Carrier” means any “air carrier,” “foreign air carrier” or “air cargo carrier” certified by the Federal Aviation Administration of the United States Department of Transportation and which is operating at the Airport.

“Airport” means the Southwest Florida International Airport located in Lee County, Florida, owned by Lee County, a political subdivision of the State of Florida, and operated by the Authority.

“Associate Airline” means any Air Carrier 100% of the capital stock or other equity interest of which is owned, directly or indirectly, by a Contracting Airline or a Person which owns or controls a Contracting Airline and, in either case, such Contracting Airline has certified to the Company in writing that such Air Carrier is so owned.

“Authority” means the Lee County Port Authority, a special district of the State of Florida, or such other agency, board, authority, or private entity which may succeed to the jurisdiction of Authority over the Airport.

“Billing” has the meaning set forth in Section 7.7(a)(i) hereof.

“Bonded or FTZ Fuel” means Fuel which is produced outside the United States of America, or in a foreign trade zone, remains segregated to the extent required by the United States Customs Service or other applicable Laws, is boarded on aircraft in the conduct of a foreign trade and otherwise meets the requirements and definitions for bonded or foreign trade zone Fuel as determined and regulated by the Department of the Treasury United States Customs Service or other applicable regulatory authorities.

“Capital Costs” means those costs defined as costs approved and designated as capital costs, including without limitation any principal, interest, premium, fees, expenses, costs and indemnities payable in connection with any financing of capital by the Fuel Committee.

“Chairperson” means the chairperson of the Fuel Committee appointed by the Fuel Committee in accordance with the LLC Agreement.

“Company” has the meaning set forth in the first paragraph of this Interline Agreement.

“Contracting Airline” means an Air Carrier that is a party to this Interline Agreement and is a Member, including any Additional Contracting Airline.

“Delaware Act” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended from time to time.

“Effective Date” means the date on which the Company commences operation of the Fuel System and GSE Facility.
“Entry Fee” means the fee established by the Fuel Committee from time to time, related to the admission of Additional Contracting Airlines.

“Event of Default” has the meaning ascribed to that term in Section 8.1 hereof.

“Extraordinary Cost” means a non-recurring expenditure or obligation of the Company that: (i) is not a part of the normal and regular ongoing expense of leasing and operating the Fuel System; and (ii) the cost of which is recovered in a manner and over a period determined by the Company. Extraordinary Cost does not include the obligation of non-defaulting Contracting Airlines to provide funds due to an Event of Default.

“Fuel” means jet aircraft fuel meeting the specification of ASTM D1655 (latest revision) or any other quality specifications established by the Fuel Committee from time to time.

“Fuel Committee” means the committee established to manage the Company pursuant to the LLC Agreement.

“Fuel System” means, collectively, all Fuel receipt, storage, transmission, delivery and dispensing systems, as described in the Fuel System Lease, and related facilities, fixtures, equipment and other real and personal property located at the Airport or otherwise that are leased, acquired, or controlled by the Company pursuant to the Fuel System Lease or otherwise.

“Fuel System Access Agreement” means an agreement between the Company and a Person to allow certain defined privileges and limited access to the Fuel System by the Person for the purpose of providing into-plane services to Users.

“Fuel System Capital Asset” means the facilities and/or equipment acquired by the Operator from time to time upon written direction from the Company for use in connection with the Fuel System and/or GSE Facility.

“Fuel System Lease” means all leases, easements, rights-of-way, and other agreements, as amended from time to time, by which the Authority grants possession and right of use of the Fuel System and the GSE Facility to the Company.

“Gallon” means a U.S. gallon.

“Gallonage” means the total number of Gallons of Fuel delivered into the aircraft of a Contracting Airline at the Airport during the relevant period, provided however, that any Associate Airline shall be billed at the same rate as such Contracting Airline and its Gallonage shall be considered part of the Gallonage of such Contracting Airline. The Gallonage of each Contracting Airline shall be the total of all Fuel delivered into the aircraft of such Contracting Airline, and into the aircraft of any Associate Airline, at the Airport regardless of whether the Fuel System was used for any part of such delivery.

“GSE Facility” means collectively GSE Fuel storage and delivery system and related facilities and appendages, if any, operated by the Company pursuant to the Fuel System Lease and this Interline Agreement for the purpose of fueling vehicles related to the servicing of aircraft.
“GSE Facility Access Agreement” means an agreement between the Company and another Person to allow access to or use of the GSE Facility, if any.

“GSE Facility User” means a Person which has executed the then-current GSE Facility Access Agreement and is permitted to withdraw GSE Fuel from the GSE Facility.

“GSE Fuel” means ground service equipment fuel, including diesel, which complies with the quality specifications established by the Company from time to time.

“Interest” means a Member’s membership interest in the Company in accordance with the provisions of the LLC Agreement and the Delaware Act.

“Interline Agreement” has the meaning set forth in the first paragraph hereof.

“Into-Plane Agent” means any Person that (i) executes a Fuel System Access Agreement; and (ii) obtains all necessary approvals and permits from the Authority to perform into-plane fueling services for Users at the Airport.

“Itinerant User” means any Person who takes delivery of Fuel from the Fuel System and who is not a Contracting Airline, Associate Airline or a Non-Contracting User.

“Late Entry Fee” means the fee established by the Fuel Committee from time to time, related to the admission of Additional Contracting Airlines who fail to satisfy the membership requirements within a period of time specified by the Fuel Committee.

“Laws” include, but are not limited to, local, state, federal, or regional statutes, regulations, ordinances, rules, orders, or other laws of whatever nature, as they now exist or may hereinafter be adopted or amended.

“LLC Agreement” means the limited liability company agreement for the Company.

“Majority-In-Interest” means, with respect to a vote for or against any matter arising under or related to the LLC Agreement or this Interline Agreement, those Members, or their respective Fuel Committee representatives, as the case may be, that collectively constitute or represent, as the case may be, more than:

a. fifty percent (50%) in number of the Members or Fuel Committee representatives, as the case may be, and

b. except as otherwise provided in Section 12.4 of the LLC Agreement, fifty percent (50%) of the total Gallonage for the twelve (12) months prior to the month in which such vote is taken,

excluding in both subparts (a) and (b) above each Member then in default under the LLC Agreement or this Interline Agreement and such Member’s Fuel Committee representative. Notwithstanding the inclusion of Fuel delivered into one or more of a Member’s Associate Airlines in a Member’s Gallonage, as provided in the definition of Gallonage, such Member shall be entitled to only a single vote when the number of Members is the basis for any vote but will
be entitled to vote the aggregate Gallonage of such Member and its Associate Airlines when Gallonage is the basis for any vote.

"Member" means each member of the Company pursuant to the LLC Agreement.

"Monthly Gallonage" means the Gallonage of a Contracting Airline for the previous calendar month or the average monthly Gallonage of the Contracting Airline during the preceding twelve (12) months, whichever is greater.

"Monthly Rental" means the total of all payments required to be paid by the Company: (i) as rent to the Authority under the Fuel System Lease; (ii) to discharge any Capital Costs for the Fuel System and the GSE Facility; (iii) for any similar or related regular periodic charge incurred for the construction, acquisition, or use of the Fuel System or the GSE Facility that is not a part of the Total Operating Costs (as defined in the Operating Agreement); and (iv) for any other obligation of the Company to the Authority under the Fuel System Lease.

"Monthly Rental Fee" means the total of all payments required to be paid by the Contracting Airlines with respect to the Monthly Rental.

"Monthly Share" has the meaning set forth in Section 7.9 hereof.

"Net Facilities Charge" is defined as calculated pursuant to Section 7.2 hereof.

"Non-Contracting User" means a Person that has executed a Non-Contracting User Agreement.

"Non-Contracting User Agreement" means an agreement by and between the Company and any Person that is not a Contracting Airline, Associate Airline or Itinerant User that desires to use the Fuel System for storage or throughput of Fuel.

"Operating Agreement" means the Maintenance, Operation and Management Services Agreement between the Company and the Operator for the maintenance, operation and management of the Fuel System and GSE Facility.

"Operator" means a qualified and duly licensed independent contractor selected by the Company to operate and maintain certain elements of the Fuel System and the GSE Facility, as specified and agreed from time to time, and who is delegated authority to act on behalf of the Company in exercising certain specified rights and obligations of the Company, including, without limitation those arising under this Interline Agreement, the Fuel System Lease, Fuel System Access Agreements, GSE Fuel System Access Agreements and Non-Contracting User Agreements.

"Person" or "person" includes any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, governmental body, or other legal entity or organization.

"Reserve Funds" means the funds required to be paid by each of the Contracting Airlines pursuant to Section 7.9 hereof.
“Service Month” has the meaning set forth in Section 7.7(a)(i).

“Special Facilities” means any facilities described in Section 9.3 hereof that the Company determines are necessary for the receipt, storage, or delivery of Fuel but are used by less than all of the Contracting Airlines and are designated as “Special Facilities” by the Fuel Committee.

“Start-Up Costs” means all operational and non-operational costs, including without limitation, research and analysis of financing alternatives, of organizing the Company, entering into the Fuel System Lease preparing this Interline Agreement and the related agreements, and taking over the management, maintenance and operation of the Fuel System and the GSE Facility that are reimbursed in accordance with Section 9.4 hereof.

“Storage Fee” means the fee imposed by the Company on a Non-Contracting User for the storage of Fuel in the Fuel System as provided in the Non-Contracting User Agreement.

“Super Majority-In-Interest” means, with respect to a vote for or against any matter arising under or related to the LLC Agreement or this Interline Agreement, those Members, or their respective Fuel Committee representatives, as the case may be, that collectively constitute or represent, as the case may be, more than:

a. seventy-five percent (75%) in number of the Members or Fuel Committee representatives, as the case may be; and

b. except as otherwise provided in Section 12.4 of the LLC Agreement, seventy-five percent (75%) of the total Gallonage for the twelve months prior to the month in which such vote is taken,

excluding in both subparts (a) and (b) above each Member then in default under the LLC Agreement or this Interline Agreement and such Member’s Fuel Committee representative. Notwithstanding the inclusion of Fuel delivered into one or more of a Member’s Associate Airlines in a Member’s Gallonage, as provided in the definition of Gallonage, such Member shall be entitled to only a single vote when the number of Members is the basis for any vote but will be entitled to vote the aggregate Gallonage of such Member and its Associate Airlines when Gallonage is the basis for any vote.

“Supplier” means any Person that has an agreement with a User for the sale and supply of Fuel or GSE Fuel at the Fuel System or GSE Facility.

“System Use Charge” means the charge or charges established from time to time by the Company to be paid to the Company for each and every Gallon of Fuel put through any part of the Fuel System for the benefit of any Person other than a Contracting Airline.

“Total Facilities Charge” means the amount calculated pursuant to Section 7.1 hereof.

“Total Operating Cost” means the Operator’s Total Operating Cost as defined in the Operating Agreement or otherwise determined by the Fuel Committee.
“User” means any Contracting Airline, Associate Airline, Non-Contracting User or Itinerant User.

“Withdrawing Airline” means any Contracting Airline that has withdrawn from this Interline Agreement pursuant to Article 12 hereof.

“Withdrawal Date” means the date as of which a Withdrawing Airline shall have or be deemed to have withdrawn from this Interline Agreement pursuant to and subject to the conditions set forth in Article 12 hereof.

1.2 Article and Section Headings, Gender and References, Etc. Unless otherwise indicated, all references herein to “Article”, “Section” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby”, “herein”, “hereof”, “hereto”, “herewith”, “hereunder” and other words of similar import refer to this Interline Agreement as a whole and not to any particular article, section, subdivision or clause hereof. The terms defined herein shall include the plural as well as the singular and the singular as well as the plural. Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof. References to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation” or “but not limited to” or words of similar import; and references to a Person includes such Person’s successors and permitted assigns. For purposes of this Interline Agreement, “in writing” and “written” mean and include but are not limited to electronic transmissions such as facsimile or electronic mail.

ARTICLE 2
TERM

This Interline Agreement shall commence and become legally binding upon the Company and each Contracting Airline upon execution by the Company and each such Contracting Airline and shall continue in effect until terminated pursuant to Article 12 or Article 13 hereof.

ARTICLE 3
FUEL SYSTEM AND GASOLINE FACILITY

3.1 Use. The Fuel System will be maintained and operated by the Company to provide: (i) the receipt, transmission and storage of Fuel delivered to the Airport; (ii) the delivery of Fuel into refueler vehicles for delivery to aircraft; (iii) the transmission and delivery of Fuel through the hydrant system; (iv) the receipt, storage and transfer of Fuel as approved by the Company to support User requirements, and (v) other functions as approved by the Company from time to time. The Company and the Contracting Airlines covenant and agree that (i) the Fuel System shall be the sole and exclusive facility for the receipt, storage and distribution of
Fuel at the Airport for use in commercial Air Carriers, and (ii) the Company may establish standards, practices and fees for access to and the operation and maintenance of the Fuel System.

3.2 Equipment Compatibility. On behalf of the Company, the Operator shall have the right to inspect at reasonable intervals any equipment that connects with the Fuel System to ensure safety, compatibility with the Fuel System, and the accuracy of any metering device (the last by means of a certified prover or as otherwise directed by the Company). Upon reasonable notice, each Contracting Airline or Associate Airline shall deliver any such connecting equipment at the time and place reasonably designated by the Operator for inspection.

3.3 Fuel System Deliveries. Each User or Supplier must provide all of the following to the Company or other party designated by or acceptable to the Company prior to each delivery of Fuel to the Fuel System or off-airport storage facilities, as applicable from time to time:

a. A delivery ticket, loading certificate, or similar document specifying: (i) the quantity and grade of Fuel contained in the shipment being delivered or transmitted; and (ii) whether such Fuel is Bonded or FTZ Fuel; and

b. A certificate which must state that such Fuel meets the applicable specifications established from time to time by the Company.

3.4 Aircraft Deliveries. Promptly upon delivery of Fuel to an aircraft, each User or its Into-Plane Agent must provide to the Company a copy of the aircraft delivery receipt showing number of Gallons delivered to such aircraft.

3.5 Alternate Fuel. If a Contracting Airline or other User notifies the Company that it cannot, for technical reasons, use the Fuel in the Fuel System for its aircraft, the Company will use reasonable efforts to assist such Contracting Airline or other User to arrange for delivery or transmission of alternate fuel in the most reasonably economical manner and through Special Facilities if necessary. The financing and amortization of the cost of any Special Facilities required to throughput such fuel to or from any User and any additional costs incurred by the Company or the Operator to maintain and operate such Special Facilities and deliver such fuel will be prepaid by such User and will not be included in the Total Facilities Charge, unless the Company determines otherwise pursuant to Article 7. This Article shall not obligate the Company to incur any expense.

3.6 GSE Facility. The Company may operate a GSE Facility. The cost of operating such GSE Facility shall be allocated to the GSE Facility Users on a monthly basis, pro-rata based on the number of Gallons of GSE Fuel withdrawn from such GSE Facility that month or such other methodology as the Company may establish. The Company shall approve from time to time the form of a GSE Facility Access Agreement which shall be consistent with the terms set forth in this Interline Agreement, and which shall contain, inter alia, the terms and conditions governing access to and use of the GSE Facility, procedures and documentation, fees and charges, qualification and training, and indemnification and insurance provisions.
ARTICLE 4
ACCESS TO FUEL SYSTEM

4.1 Non-Contracting Users. The Company may allow any Person who does not become a party to this Interline Agreement as a Contracting Airline and which is not an Associate Airline as set forth in the Gallonage definition to use the Fuel System for the receipt, storage, and delivery of Fuel, upon execution by that Person of the then current Non-Contracting User Agreement.

4.2 Non-Contracting User Agreement. The Company will establish from time to time, the form of Non-Contracting User Agreement. The Non-Contracting User Agreement will be consistent with this Interline Agreement, and will contain, inter alia, the terms and conditions governing use of the Fuel System, Into-Plane Agent requirements, use fees and charges, and indemnification, insurance and assignment provisions. The Non-Contracting User Agreement will provide that, as long as the Non-Contracting User abides by the terms of that agreement and pays the fees and charges provided therein, its access to and use of the Fuel System otherwise will be nondiscriminatory. Notwithstanding anything to the contrary in this Interline Agreement or any related agreement, the Company may charge different fees or rates to each category of User, i.e., Contracting Airlines (including Associate Airlines), Non-Contracting Users and Itinerant Users.

4.3 Servicing Companies. In order to access the Fuel System to perform into-plane fueling services at the Airport, each Into-Plane Agent, including, without limitation, any Contracting Airline that desires to perform into-plane fueling must execute a Fuel System Access Agreement and must comply with all of the terms and conditions of the Fuel System Access Agreement. If service is to be provided by such Into-Plane Agent to an Itinerant User, the Air Carrier or Supplier holding title to the Fuel that is to be provided to the Itinerant User must be a Contracting Airline, Associate Airline or a Non-Contracting User.

4.4 Fuel System Access Agreement. The Company will establish from time to time, the form of Fuel System Access Agreement. The Fuel System Access Agreement shall be consistent with this Interline Agreement and will contain, inter alia, the terms and conditions governing access to and use of the Fuel System, procedures and documentation, fees and charges, qualification and training, and indemnification and insurance provisions.

4.5 System Use Charge. For each Gallon of Fuel that is transported through the Fuel System under the ownership of a Non-Contracting User and is not ultimately delivered to a Contracting Airline (or its Associate Airline) at the Airport, a System Use Charge will be applied. For each Gallon of Fuel, that is transported through the Fuel System under the ownership of a Contracting Airline (or its Associate Airline) or is ultimately delivered to a Contracting Airline (or its Associate Airline) at the Airport, a System Use Charge will not be applied. The System Use Charge, when applicable, will be assessed directly to the Non-Contracting User that owns the Fuel that has been transported through the Fuel System to such User. The Operator will be responsible to bill the Non-Contracting Users for all applicable System Use Charges and to collect the payments on behalf of the Company. The System Use Charges will be set by the Company and may be changed from time to time. The System Use
4.6 **Storage Fee.** In the event that a Non-Contracting User has Fuel delivered into the Fuel System and after sixty (60) days has not withdrawn a substantially equivalent volume of Fuel from the Fuel System, a monthly Storage Fee may be assessed by the Company for the amount of Fuel Gallons which remain in the Fuel System for longer than thirty (30) days. The Storage Fee may be assessed directly to such Non-Contracting User. The Operator will be responsible to bill the Non-Contracting Users for all applicable Storage Fees and to collect the payments on behalf of the Company. The Storage Fee will be established by the Company and may be changed from time to time as approved by a Majority-In-Interest. The Storage Fee will be in addition to any fee or charge imposed by the Authority and required to be collected by the Operator, the Company or other Person on behalf of the Authority.

**ARTICLE 5**

**FUEL SUPPLY; STORAGE; DELIVERY**

5.1 **Fuel Suppliers.** Each User may make arrangements with any Supplier or Suppliers to have Fuel transmitted through or delivered into the Fuel System, in accordance with terms and conditions consistent with this Interline Agreement and the documents referred to in this Interline Agreement. Each User shall have the right for each of its Suppliers to have access to the Fuel System upon execution and delivery by such Supplier (if not a Contracting Airline or its Associate Airline) of a Non-Contracting User Agreement established and approved from time to time by the Company and the continuing compliance therewith by such Supplier.

5.2 **Commingling Fuel.** All Fuel and GSE Fuel delivered to the Fuel System or off-airport storage facilities, as applicable from time to time, or the GSE Facility, respectively, will be commingled by type. However, if and to the extent required by the United States Customs Service or other applicable Laws, Bonded or FTZ Fuel will be commingled only with other Bonded or FTZ Fuel, respectively, and will be segregated from other Fuel and GSE Fuel. The Company will not be required to segregate or distinguish Fuel received for eventual delivery to a Contracting Airline or Non-Contracting User, except that, as required, Bonded or FTZ Fuel shall be handled in accordance with the then most current U.S. Customs Regulations.

5.3 **Fuel Withdrawals and Storage.** Each User is entitled to withdraw Fuel up to the amount that it or its Supplier has stored in the Fuel System at such time. Each User or its Supplier must have on hand in the Fuel System sufficient Fuel to cover each withdrawal by that User. The Company may establish from time to time minimum or maximum amounts of Fuel storage for each User and may consider that the historical data do not reflect reasonable anticipated withdrawals.

5.4 **Shortfalls.** If a User desires to withdraw a larger quantity of Fuel from the Fuel System than it has on hand, that User must arrange with another User or Supplier with sufficient inventory in the Fuel System to transfer the shortfall to the User. All such transfers must be confirmed by appropriate documentation and verified by the Operator prior to delivery of the Fuel to the User.
ARTICLE 6
OPERATOR

6.1 Operator. The Company will select an Operator to maintain, operate and manage the Fuel System and the GSE Facility. The Operator will execute the Operating Agreement which will specify the Operator’s duties, responsibilities and compensation, as well as the rights and obligations of the Company with respect to the Operator.

6.2 Responsibilities. The Operator will, inter alia, maintain, operate and manage the applicable elements of the Fuel System and the GSE Facility; will monitor and require compliance with this Interline Agreement, the Non-Contracting User Agreements and the Fuel System Access Agreements, GSE Facility Agreement and other agreements related to the Fuel System and the GSE Facility; and will invoice and collect monies applicable thereto. The Company will require the Operator to provide such bookkeeping, accounting, invoicing and reports and to perform such other services as are necessary to accomplish the requirements of this Interline Agreement and to comply with all applicable Laws.

6.3 Payments. As directed by the Company, the Operator will invoice, collect and remit each month as due the Monthly Rental Fee and any other charges, fees, costs and expenses necessary to maintain, operate and manage the Fuel System and the GSE Facility. Each of the Contracting Airlines acknowledge that (a) the Operator may act for and on behalf of the Company in accounting, billing, and collecting monies and (b) at the time they become due, the Operator shall remit payments as directed by the Company of all the items included in the Total Facilities Charge.

ARTICLE 7
LIABILITY FOR FEES AND CHARGES

7.1 Total Facilities Charge. The “Total Facilities Charge” is the sum of all charges, fees, costs, expenses and liabilities incurred in relation to (i) the leasing, acquisition, development, construction, maintenance, operation, financing, refinancing and management of the Fuel System, (ii) the organization, management and operation of the Company, including any ancillary activities of the Company, (iii) Special Facilities, (iv) any other costs for or obligations (including, without limitation, environmental obligations) in respect of facilities of the Company on or off the Airport, such as additional storage facilities and pipeline costs, related to the storage and distribution of Fuel at the Airport, including without limitation, all obligations under the Fuel System Lease or any other lease agreements in respect of such facilities; and (v) the GSE Facility. The Total Facilities Charge will include, without limitation, the Total Operating Costs (including without limitation the Operator’s management fee) and the Monthly Rental Fee.

7.2 Net Facilities Charge. The “Net Facilities Charge” for any month will be the Total Facilities Charge for that month, reduced by items (a), (b), (c), (d), (e) and (f) below, to the extent that such items are collected by the Company during that month.

a. All costs and fees payable by Non-Contracting Users and Itinerant Users in any month for use of the Fuel System;
b. Costs that are determined by the Company to be related to Special Facilities. Such costs will, in accordance with Sections 3.5 and 9.3, be charged to and paid by only the Contracting Airlines or other Users using such Special Facilities as agreed among all such Users or, in the absence of agreement, as reasonably determined by the Fuel Committee;

c. Costs incurred (i) for the sole benefit of one or more particular User(s) or as a result of providing the GSE Facility for the GSE Facility Users; (ii) as a result of providing fueling facilities for other products to the users thereof; or (iii) as the result of the negligence of, or damage to the Fuel System caused by, the Operator, any User or its Into-Plane Agent. Such costs will be charged to and paid by only the Persons causing such costs to be incurred;

d. Proceeds from the sale or disposition of Fuel System Capital Assets and insurance or condemnation proceeds therefrom whether payable to the Company or the Operator; and

e. Delinquent bill interest funds, other interest income and miscellaneous revenues or income.

7.3 Liability for Costs. The Net Facilities Charge will be allocated to and paid by each Contracting Airline according to the following cost sharing formula: One hundred percent (100%) of the Net Facilities Charge for each month will be allocated pro rata based on the proportion that each Contracting Airline’s Gallonage for that month bears to the total Gallonage of all Contracting Airlines for that month.

7.4 Extraordinary Costs. The Company may allocate, on a reasonably equitable basis but otherwise in its discretion, Extraordinary Costs that would otherwise be part of the Net Facilities Charge on a basis other than that provided in Section 7.3 above and may instruct the Operator as to the allocation and collection thereof. In the absence of any such allocation by the Company, Extraordinary Costs shall be billed and paid as provided in Section 7.3.

7.5 Temporary Shut-Down. In the event that no Fuel has been delivered through the Fuel System for a period of thirty (30) consecutive days, then the Net Facilities Charge will be allocated among the Contracting Airlines on the basis of average Monthly Gallonage for the preceding twelve months ending immediately prior to the cessation of such deliveries (or, if shorter, the period that the Contracting Airline has been a User of the Fuel System).

7.6 Invoicing. The Company will invoice and collect the Total Facilities Charge and any other charges due each month as follows:

a. The Net Facilities Charge for that month will be allocated and billed in accordance with Section 7.3 above and collected from the Contracting Airlines;

b. All costs and fees relating to use of the Fuel System by Non-Contracting Users and Itinerant Users for that month will be billed to and collected from such Persons;

c. Costs for that month that are determined by the Company to be related to Special Facilities shall be billed to the Contracting Airline(s) or other persons or entities using such Special Facilities, except as otherwise provided in Section 9.3 hereof;
d. Costs incurred (i) for the sole benefit of one or more particular User(s); (ii) as a result of providing facilities for GSE Fuel or other products to the user(s) thereof; or (iii) as the result of the negligence of, or damage to the Fuel System, caused by the Operator, any User or its Into-Plane Agent, will be charged to and paid by only the Persons causing such costs to be incurred;

e. Delinquent bill interest will be billed to any User which is delinquent in payments.

7.7 Payments.

a. Each Contracting Airline shall make payments to the Company within the time frame set forth below and in accordance with the following:

(i) At the end of each month of actual service (the “Service Month”), the Company will invoice each Contracting Airline for its allocated share of the actual Total Facilities Charge and the Net Facilities Charge for such Service Month (the “Billing”).

(ii) The amount set forth on any Billing shall be due and payable within thirty (30) days from the date of the invoice. The amount of any delinquent bill will bear interest at a rate of two percent (2%) per month (or the maximum rate permitted by law, whichever is lower), from the date such amount is due.

b. Each Contracting Airline and its Associate Airline must make payments to the Company in accordance with the terms of this Interline Agreement, with no right of setoff or counterclaim, with respect to amounts properly due and payable. In the event of the failure of any Contracting Airline or its Associate Airline to pay when due any amount owed in accordance with the terms of this Interline Agreement, and such amount is not satisfied by such defaulting Contracting Airline’s Reserve Funds, each non-defaulting Contracting Airline must pay, within ten (10) days of a demand from the Company and/or invoice from the Operator authorized by the Company, its pro rata share of the amount in default, determined in accordance with the allocation set forth in Section 7.3 above, but calculated assuming that the defaulting Contracting Airline was not a Contracting Airline for the month in question. In the event of default in the payment of any amounts due to the Company from any Contracting Airline, such defaulted amounts may be collected as provided in Article 8.

7.8 Non-Liability for Fuel Purchases. In no event shall the Company, the Operator or any Contracting Airline have any obligation to pay for Fuel or GSE Fuel delivered to or stored in the Fuel System or GSE Facility, respectively, by or on behalf of any other Contracting Airline or any other User.

7.9 Reserve Funds. To secure the prompt payment by the Contracting Airlines of the amounts due from them each month, each Contracting Airline shall pay to the Company and at all times maintain Reserve Funds with and held by the Company equal to twice such Contracting Airline’s average monthly share (calculated to include the Gallonage of any Associate Airline as described in the Gallonage definition) of the Total Facilities Charge (the “Monthly Share”) as determined in accordance with Section 7.10 below for the previous twelve (12) months. Reserve Funds may be used by the Company immediately to cover any default by that Contracting
Airline and/or its Associate Airline of its payment obligations under this Interline Agreement. A defaulting Contracting Airline shall not be entitled to prior notice of or have the right to consent to any draw from its Reserve Funds, and shall immediately replenish its Reserve Funds after any draw therefrom. The Reserve Funds may be commingled with other funds of the Company and used by the Company as the Company shall determine, subject to the obligation, if applicable, to refund such Reserve Funds in accordance with the terms of this Interline Agreement. The Company may commingle each Contracting Airline’s Reserve Funds into one or more accounts for investment purposes. The Reserve Funds are refundable, less deductions for defaults as provided above or any other amount due or payable by the Contracting Airline or its Associate Airline, to that Contracting Airline upon its Withdrawal Date. Each Member acknowledges and agrees that it has no ownership in or right, title or interest in the Reserve Funds or any other funds held by the Company except a claim, if any, to the net amount due and payable to such Member, if any, less all amounts owed by such Member in each case pursuant to this Interline Agreement.

7.10 Reserve Funds Amount. As of the Effective Date, each Contracting Airline’s Reserve Funds will be twice its Monthly Share based upon its Gallonage (including the Gallonage of its Associate Airlines) for the most recent twelve (12) month period preceding the Effective Date for which Gallonage information is available. Thereafter, the Reserve Funds for each Contracting Airline will be adjusted annually (on a calendar year basis), or at such other times as may be directed by the Company, to equal twice its average Monthly Share (including the Gallonage of its Associate Airlines) for the previous twelve (12) months for which Gallonage information is available.

7.11 Additional Contracting Airlines-Reserve Funds. Each Additional Contracting Airline will be required to pay to the Company Reserve Funds, as of the date it becomes a party to this Interline Agreement, equal to twice its estimated Monthly Share, which estimate shall be subject to the approval of the Company. The Reserve Funds of such Additional Contracting Airline shall be subject to adjustment as provided in Section 7.10.

7.12 Associate Airlines. With respect to any Air Carrier certified as an Associate Airline in accordance with this Interline Agreement, all liabilities incurred by such Associate Airline related to the use of the Fuel System or otherwise owed to the Company, including but not limited to, billings under this Article 7 in relation to Fuel delivered through or stored in the Fuel System, services of the Operator or services of the Company, will be the responsibility and liability of the Contracting Airline which certified such Associate Airline. The Associate Airline shall have the same rights and obligations under Articles 4 and 5 respecting use of the Fuel System as such Contracting Airline but shall not be a Member or a Contracting Airline. The Chairperson of the Fuel Committee will advise the Operator and the Contracting Airlines of any Air Carrier which is certified as an Associate Airline together with the name of the Contracting Airline so certifying.

ARTICLE 8
DEFAULT

8.1 Events of Default and Termination. An “Event of Default” shall exist with respect to a Contracting Airline if any one or more of the following events shall occur:
a. The failure of a Contracting Airline to pay any amount properly due as a Net Facilities Charge, Special Facilities Charge, Extraordinary Cost or otherwise hereunder as it becomes due and payable in accordance with the terms of this Interline Agreement;

b. A failure by a Contracting Airline to pay any sum as it becomes properly due and payable under any other agreement related to the Fuel System in accordance with the terms of that agreement;

c. A failure by a Contracting Airline to perform punctually and properly any covenant, agreement, obligation, term or condition contained herein;

d. Any statement, representation, or warranty by a Contracting Airline herein, or in any writing delivered to the Company or the Operator pursuant to the provisions hereof, is determined by the Company to be false, intentionally misleading, or erroneous in any material respect;

e. A Contracting Airline shall be unable to satisfy any condition specified herein as precedent to the obligation of the Contracting Airlines or the Company to continue performance hereunder;

f. There shall be an application for or the appointment of a receiver, trustee, intervener, custodian or liquidator of a Contracting Airline and such person is not removed within sixty (60) days after such application or appointment;

g. A Contracting Airline shall take or permit to be taken any action seeking relief under, or an order of relief under, or shall take any other advantage of any bankruptcy, reorganization, or other insolvency proceeding and not provide adequate assurances of the future performance of this Interline Agreement;

h. The making by a Contracting Airline of a general assignment for the benefit of creditors;

i. The entry of an order, judgment, or decree by any court of competent jurisdiction granting, with respect to a Contracting Airline, an order for relief or other order under any bankruptcy, reorganization, or other insolvency proceeding and not providing for the assumption of this Interline Agreement;

j. A Contracting Airline shall become unable to pay its debts generally as they become due or becomes insolvent;

k. The liquidation, termination or dissolution of a Contracting Airline; and/or

l. Any guaranty executed in connection herewith shall, for any reason, cease to be in full force and effect, or be declared null and void or unenforceable in whole or in part, or the validity or enforceability of any guaranty executed in connection herewith shall be challenged or denied by the guarantor executing same.
8.2 Consequences of Default.

a. Report to Company. If any Contracting Airline knows of an Event of Default or of facts that lead it to believe an Event of Default has occurred, then it shall use commercially reasonable efforts to immediately provide notice in writing to the Company, but absent fraud shall not be liable for failure to so notify.

b. Notice to Defaulting Contracting Airline. The Company will give notice to the defaulting Contracting Airline and any other person entitled thereto promptly after receipt of notice from any credible source that there has been an Event of Default with respect to a Contracting Airline and grant such Contracting Airline ten (10) days in which to cure such Event of Default; provided however, no notice shall be required if any event described in Section 8.1(f) through (k) occurs and is continuing. If such Event of Default has not been cured within the ten (10) day period, the defaulting Contracting Airline will be retroactively billed as a Non-Contracting User from the date of the Event of Default and will continue to be billed by the Company as a Non-Contracting User until one (1) month after the defaulting Contracting Airline has cured the Event of Default if, during such one (1) month period, the defaulting Contracting Airline has paid when due all monies owed the Company and has otherwise cured the Event of Default and performed all of its obligations hereunder. As an additional remedy hereunder, the Company may terminate the defaulting Contracting Airline as a Member of the Company pursuant to the terms of the LLC Agreement, and thereupon, the defaulting Contracting Airline shall cease to be a Member and a Contracting Airline hereunder. Such defaulting Contracting Airline during the period of any Event of Default will remain subject to all obligations herein as a Contracting Airline but shall have no rights to vote as a Contracting Airline nor shall its representatives vote as Members with respect to the Company nor shall its Gallonage be counted respecting a Majority-In-Interest or Super-Majority-In-Interest otherwise in connection with any voting. Notwithstanding anything to the contrary contained in this Interline Agreement, calculation of a Majority-In-Interest or Super-Majority-In-Interest in voting with respect to a defaulting Contracting Airline will not include the Gallonage of such defaulting Contracting Airline in the aggregate Gallonage of all Contracting Airlines nor count such defaulting Contracting Airline as a Contracting Airline. A Contracting Airline which has defaulted under this Article is not relieved of any of the responsibilities, liabilities, or obligations of a Contracting Airline hereunder because of its default.

c. Collection. The Company shall have a claim, which the Operator is authorized to pursue and collect against any defaulting Contracting Airline. Such claim may be enforced by:

(i) Terminating fueling service through the Fuel System to the defaulting Contracting Airline; and/or

(ii) Pursuing any and all other legal or equitable remedies available to the Company or, as approved by the Company, the Operator.

8.3 Reimbursement. The Contracting Airlines will be reimbursed with interest, pro rata, according to the respective amounts advanced pursuant to Section 7.7(b) as monies are collected from the defaulting Contracting Airline. All delinquent amounts due from a defaulting
Contracting Airline shall bear interest from the due date at two percent (2%) per month (or the maximum rate permitted by law, whichever is lower).

8.4 Costs. As it pertains to this Interline Agreement, a defaulting Contracting Airline will be liable for all reasonable costs and expenses, including reasonable attorneys’ fees and disbursements at trial or on appeal, expended in order to collect or attempt to collect the delinquent payment. Any amount due from, or owed by, a defaulting Contracting Airline hereunder may be offset against any amounts otherwise payable to the defaulting Contracting Airline by the Company.

ARTICLE 9
ACQUISITION OF IMPROVEMENTS AND ADDITIONAL FACILITIES

9.1 Financing. The Contracting Airlines will be liable as provided in this Interline Agreement for any costs associated with any improvements to the Fuel System, GSE Facility or any Additional Facilities, excluding costs associated with Special Facilities not otherwise included in the Total Facilities Charge pursuant to Section 9.3. Each Contracting Airline shall provide such information and legal opinions regarding such Contracting Airline from time to time as the Company may reasonably request in connection with the issuance of any bonds, notes or other financing, including for purposes of any initial or ongoing disclosure with respect thereto.

9.2 Additional Facilities. The Company may cause any Additional Facilities to be designed, constructed, modified, leased, purchased, acquired, financed and billed as the Company determines from time to time. The costs of designing, constructing, maintaining, and financing such Additional Facilities will become part of the Total Facilities Charge.

9.3 Special Facilities. One or more Contracting Airlines may, with the prior written approval of the Company, construct various aircraft fueling and related facilities that may operate alone or in conjunction with the Fuel System. Any such Special Facilities will be reviewed and approved in advance by the Company and must be fully compatible with the Fuel System. The costs of designing, constructing, maintaining and financing such Special Facilities will be borne solely by those Contracting Airlines using the Special Facilities and will not become part of the Total Facilities Charge without consent of a Majority-In-Interest of the Fuel Committee.

9.4 Start-Up Costs. Start-Up Costs that were incurred prior to the Effective Date shall be amortized equally over the twelve (12) months following the Effective Date, or such shorter or longer period as the Company may establish, and shall be reimbursed by all Contracting Airlines as part of the Total Facilities Charge for such twelve (12) months or shorter or longer period so established or as the Company may reallocate from time to time, including without limitation, to Additional Contracting Airlines. The Company is authorized to reimburse (together with interest at a rate per annum established by the Fuel Committee payable on the amounts reimbursed from the date advanced until paid) the Contracting Airlines and other persons who incurred such Start-Up Costs out of monies paid by the Contracting Airlines.
9.5 **Transfer of Funds.** Each of the Contracting Airlines agree that all reserve deposits, loan funds or other excess funds previously held by Swissport Fueling, Inc. ("Swissport") in connection with the operation of the Fuel System and/or GSE Facility prior to the Effective Date of the Fuel System Lease (as such term is defined in the Fuel System Lease) and otherwise owed by Swissport to such Contracting Airline shall be transferred to the Company to be allocated first to the Reserve Funds required from such Contracting Airline pursuant to this Interline Agreement and second as a loan from such Contracting Airline to be evidenced by a promissory note in form approved by the Fuel Committee unless the Fuel Committee approves the payment of amounts in excess of the required Reserve Funds to such Contracting Airline.

**ARTICLE 10**

**INDEMNIFICATION**

10.1 **Indemnification.** Each Contracting Airline (the "Indemnitor") shall defend, indemnify and hold harmless the Company, each of the other Contracting Airlines and their respective officers, employees, agents and contractors (collectively the "Indemnitees") against and from any and all liabilities, claims, suits, judgments, losses, damages, settlements, or costs (including reasonable attorneys’ fees and expenses) for injuries to or deaths of persons or loss of or damage to property (including financial loss) arising from: (i) the use of the Fuel System by the Indemnitor or its employees, agents, contractors or invitees; or (ii) any failure by the Indemnitor to pay for Fuel, GSE Fuel or any other amounts due when owed by such Indemnitor under this Interline Agreement or any other breach by the Indemnitor of his Interline Agreement or any related agreement, all except to the extent caused by the negligence or willful misconduct of the subject Indemnitee.

10.2 **Defense.** The Indemnitor will accept and defend all such claims and suits regardless of the merit thereof (including without limitation investigation, pleading, discovery, motions, trial and appeal) at Indemnitor’s sole cost and expense, and including any settlement thereof. The Indemnitees shall cooperate in the defense as reasonably requested by the Indemnitor at the Indemnitor’s expense.

10.3 **Survival.** Indemnitor’s obligation and Indemnitees’ rights under this Article shall survive the withdrawal of Indemnitor as a Contracting Airline or the termination or expiration of this Interline Agreement.

10.4 **Limitation of Liability.** Except as provided in this Interline Agreement, no Contracting Airline will have any liability to the Operator or to the Company arising from the provision of any services by the Operator or the Company to that Contracting Airline or to any other Contracting Airline, and each Contracting Airline hereby waives and releases any claims it may have arising from the provision of such services.

**ARTICLE 11**

**ADDITIONAL CONTRACTING AIRLINES**

11.1 **Admission of Additional Contracting Airlines.** The use of the Fuel System and the opportunity to become a Member of the Company will be open to all Air Carriers using
the Airport. Admission of an Air Carrier to this Interline Agreement and the related agreements as an Additional Contracting Airline will be open to all Air Carriers who are approved by the Authority to operate at the Airport and otherwise meet the definition of Air Carrier in this Interline Agreement.

11.2 Requirements. In order to become an Additional Contracting Airline, an Air Carrier must fulfill each of the following conditions:

a. Submit to the Company a statement of estimated Gallonage for the twelve (12) months following the requested Acceptance Date;

b. Execute a counterpart copy of the then current Interline Agreement and submit it to the Company;

c. Execute a counterpart copy of the then current LLC Agreement and submit it to the Company and otherwise satisfy the applicable requirements in order to become a Member of the Company;

d. Pay any required minimum capital contribution and an Entry Fee or Late Entry Fee, if any, as established by the Company from time to time;

e. Pay Reserve Funds in the amount determined in accordance with Section 7.11 above; and

f. Provide evidence that it is or will be operating at the Airport, together with all legal opinions and information, if any, required by the Company pursuant to Section 9.1 hereof.

11.3 Procedure for Admission. Any Air Carrier that wishes to become an Additional Contracting Airline should give written notice to the Company. The notice must include: (i) written evidence of approval by the Authority to operate at the Airport; (ii) a statement of estimated Monthly Gallonage for the twelve (12) month period following the requested Acceptance Date; and (iii) the requested Acceptance Date. If the material submitted is found by the Company to comply with this Article 11, then the requesting Air Carrier will be provided copies of the Fuel System Lease, this Interline Agreement and the LLC Agreement, a statement setting forth the Entry Fee, if any, the Late Entry Fee, if any, a statement setting forth the Reserve Funds amount, and such other documents for signature as may reasonably be required. If all submissions are in order, the requesting Air Carrier will, upon execution of this Interline Agreement and the LLC Agreement, upon payment of the Reserve Funds amount, and fulfillment of all other requirements in Section 11.2 become an Additional Contracting Airline on the Acceptance Date, and, thereafter will have the same rights and obligations under this Interline Agreement as all other Contracting Airlines.

11.4 Acceptance Date. The Acceptance Date shall be retroactive to the Effective Date for any Additional Contracting Airline satisfying the requirements of this Article 11 on or prior to December 31, 2011. Unless otherwise specified by the Fuel Committee, the Acceptance Date for any other Additional Contracting Airline will be the first day of the month (commencing at
12:01 a.m. local time at the Airport) after notification to the Additional Contracting Airline of receipt by the Company of all required documents and payments.

11.5 Gallonage. For purposes of computing a Majority-In-Interest and Super-Majority-In-Interest for the twelve (12) months following the Acceptance Date, the Monthly Gallonage of an Additional Contracting Airline will be the greater of: (i) the estimated Monthly Gallonage as submitted pursuant to Section 11.2 above; or (ii) the actual Monthly Gallonage for the previous month, where available, multiplied by twelve.

11.6 Admission. If an Air Carrier providing service to the Airport on the Effective Date makes a written request to become a Contracting Airline, then it may become a Contracting Airline, subject to compliance with the provisions of this Article 11.

11.7 Special Admission. Any Air Carrier not providing service to the Airport on the Effective Date shall be offered the opportunity to become a Contracting Airline and may be admitted as a Contracting Airline after commencing operations at the Airport, subject to complying with the provisions of this Article 11. Any such Air Carrier joining within ninety (90) days of commencing operations at the Airport shall be treated as a Non-Contracting User until the Acceptance Date for such Air Carrier; provided, however, that such Air Carrier has complied with all requirements for status as a Non-Contracting User including execution of a Non-Contracting User Agreement. From and after the Acceptance Date, the Additional Contracting Airline shall be treated as a Contracting Airline and shall be entitled to a refund for the amounts paid by it in excess of the amounts that it otherwise would have paid if it had been a Contracting Airline during the period from the commencement of operations at the Airport until the Acceptance Date, provided that such period shall not be longer than ninety (90) days. If an Air Carrier fails to satisfy all requirements in order to be admitted as a Contracting Airline on or before the later of (a) ninety (90) days after the Effective Date (as such period may be adjusted by the Fuel Committee from time to time) or (b) ninety (90) days after commencing operations at the Airport (as such period may be adjusted by the Fuel Committee from time to time), such Air Carrier shall be subject to a Late Entry Fee in an amount not less than $10,000 (as may be adjusted by the Fuel Committee from time to time.)

ARTICLE 12
WITHDRAWAL

12.1 Procedure for Withdrawal.

a. Any Contracting Airline shall be allowed to withdraw from this Interline Agreement subject to compliance with the applicable provisions of this Interline Agreement and no Contracting Airline shall otherwise be allowed to withdraw from this Interline Agreement except with the approval of the Company. Any Contracting Airline shall, in order to withdraw from this Interline Agreement, give notice to the Company of its intention to do so at least sixty (60) days in advance of the Withdrawal Date, which date shall be the last day of a calendar month.
b. Any Contracting Airline which desires to withdraw from this Interline Agreement shall remain fully liable for all of its obligations hereunder and shall pay its share of all liabilities accruing up to and including the Withdrawal Date.

12.2 Liabilities and Credits of Withdrawing Airlines. Notwithstanding a Contracting Airline’s withdrawal from this Interline Agreement in compliance with Section 12.1 above, such Withdrawing Airline shall in any event thereafter continue to be liable under this Interline Agreement for:

a. all past, present and future obligations to the extent that such obligations are attributable to a period of time prior to the Withdrawal Date for such Withdrawing Airline; and

b. if all Contracting Airlines have withdrawn from this Interline Agreement, then each Person that has been a Contracting Airline during the five-year period preceding such withdrawal shall be liable for obligations of the Company incurred prior to withdrawal of all Contracting Airlines to the extent such person’s aggregate Gallonage during such five-year period bears to the total of all of such Persons’ aggregate Gallonage during such five-year period, and the provisions of Paragraph 7.7 shall be applicable in the event of a default in the payment of any amounts due to the Company under this Interline Agreement with respect to one or more of such Contracting Airlines.

12.3 Limitation. Notwithstanding the foregoing, no Contracting Airlines shall withdraw from this Interline Agreement:

a. during any period of time when the Fuel System is shut down or inoperative for any reason; or

b. if a default exists or by reason of such withdrawal would exist under the Fuel System Lease, any trust indenture or any documents utilized in connection with financing any improvements to the Fuel System.

12.4 Withdrawal of Inventory. On or before the Withdrawal Date, the Withdrawing Airline shall make arrangements for the transfer or withdrawal of all Fuel or GSE Fuel owned by such Withdrawing Airline remaining in the Fuel System or the GSE Facility, respectively. The Company may impose storage fees with respect to any Fuel or GSE Fuel owned by the Withdrawing Airline remaining in the Fuel system or GSE Facility after the Withdrawal Date.

12.5 Termination. Upon payment of all amounts payable by the Withdrawing Airline and satisfaction of all obligations of the Withdrawing Airline hereunder, this Interline Agreement shall terminate as to the Withdrawing Airline only. The amounts in the Reserve Funds of the Withdrawing Airline shall be returned to it, net of any required deductions or setoffs, within sixty (60) days after the Withdrawal Date.

12.6 Termination of Membership. Subject to the obligations and requirements of this Article 12, a Contracting Airline shall be deemed to have withdrawn from the Interline Agreement as of the date it ceases to be a Member.
ARTICLE 13
TERMINATION

13.1 Termination of the Fuel System Lease. If the Fuel System Lease is terminated or expires, this Interline Agreement may be terminated at any time by the Contracting Airlines which constitute a Majority-In-Interest; provided, however, that in no event may this Interline Agreement be terminated for any reason if any obligations are outstanding in respect of indebtedness of the Company for borrowed money. Upon the termination of this Interline Agreement pursuant to this Article, the allocation of the Monthly Rental Fee and all other expenses and revenues shall be as provided for in Section 7.3 of this Interline Agreement.

13.2 Survival of Certain Provisions. The payment and indemnity provisions set forth in Article 7 and Article 10 shall survive the termination of this Interline Agreement.

ARTICLE 14
ADDITIONAL PROVISIONS

14.1 Covenant to Sign Documents. Each Contracting Airline covenants, on behalf of itself, its successors and assigns, to execute, with acknowledgment or affidavit if required, any and all documents, agreements and writings, including any documents or agreements relating to any continuing disclosure obligations of each Contracting Airline with respect to any financing, and to provide any legal opinions that may be necessary or expedient in the implementation of this Interline Agreement and the purchase, construction, modification, leasing, financing and operation of the Fuel System as contemplated by this Interline Agreement.

14.2 Headings. The titles and headings of the various articles and sections herein are intended solely for convenience of reference and are not intended for any purpose whatsoever to explain, modify, or place any construction upon any of the provisions herein.

14.3 Attorneys’ Fees. In the event any dispute among the parties hereto should result in litigation, the prevailing party shall be reimbursed for all reasonable costs including, but not limited to, reasonable attorneys’ fees.

14.4 Notices. Any notice, consent or approval required or delivered under this Interline Agreement must, unless otherwise stated herein, be given: (a) by teletype, facsimile or electronic mail; or (b) by oral communication by telephone or in person, followed promptly by additional notice by teletype, telegram, cable, facsimile, electronic mail, hand-delivered writing, or prepaid certified first class mail return receipt requested (air mail if international) to the Contracting Airline at the address set forth below its signature and to the Company at the following addresses or at such other address as shall be designated by a party in a written notice to each other party complying as to delivery with the terms of this Section 14.4, in each case with a copy to the Chairperson of the Fuel Committee:
Company RSW Fuel Company LLC
Howard Haglund, Fuel Committee Chairperson
c/o Jet Blue Airways
118-29 Queens Blvd.
Forest Hills, NY 11375
Tel: 718-709-2561
Fax: 718-709-3618

with a copy to: Karen L. Chapman, Esq.
Sherman & Howard L.L.C.
633 Seventeenth Street, Suite 3000
Denver, CO 80202
Tel: 303-297-2900
Fax: 303-298-0940
Email: kchapman@shermanhoward.com

with a copy to: Operator at its designated address

Notices sent by certified first class mail shall be deemed received on the date of delivery as indicated on the return receipt. Any notice or other communication dispatched or given by teletype, facsimile, electronic mail or delivered orally or personally shall be deemed to have been received on the date dispatched or given or on the first business day thereafter if dispatch is made on a non-business day generally recognized as such in the State of Florida.

14.5 Counterparts. This Interline Agreement may be executed in any number of counterparts and by the Company and the various Contracting Airlines or Additional Contracting Airlines on separate counterparts and all of which taken together constitute one and the same instrument. A signed counterpart is as binding as an original.

14.6 Applicable Law. This Interline Agreement is to be governed by and construed under the laws of the State of Delaware, U.S.A. The parties consent to the jurisdiction of the courts of the State of Delaware or the federal courts located within the State of Delaware and waive any claim of lack of jurisdiction or forum non conveniens.

14.7 Not a Partnership. Neither this Interline Agreement nor the relationship of the Contracting Airlines as a consequence of their membership in the Company and the operation of the Fuel System creates a partnership, joint venture or agency relationship between the parties to this Interline Agreement. No Contracting Airline may commit any other Contracting Airline or the Company to any debt or obligation of any type whatsoever other than as provided herein, in the LLC Agreement or in other documents signed by or binding on a Contracting Airline or the Company.

14.8 Amendments. This Interline Agreement may be amended or modified as follows:
a. Except as provided in subsection (b) below, an amendment will be effective only if evidenced by a writing which sets forth the text of the amendment and is signed by the Company and a Majority-In-Interest of Contracting Airlines approving of the amendment.

b. Each party hereto, by execution of a counterpart of this Interline Agreement, consents to the addition of other Contracting Airlines from time to time pursuant to Article 11 and the withdrawal of other Contracting Airlines from time to time pursuant to Article 12.

14.9 Assignment. The rights and obligations of any Contracting Airline hereunder may not be assigned or transferred in any way, except to a transferee of such Contracting Airline’s Interest in the Company. Subject to the foregoing restriction on assignment, the obligations hereunder are binding on the successors and assigns of each Contracting Airline. The Company may assign its rights hereunder if approved by a Majority-In-Interest of Contracting Airlines, including in connection with the issuance of any financing by the Company. In connection with any such assignment so approved, each of the Contracting Airlines consents to the pledge, collateral assignment and grant of security interests of the Company’s rights under, and claims against each of the Contracting Airlines pursuant to, this Interline Agreement.

14.10 U.S. Currency. Any payments required by this Interline Agreement from one party to any other shall be made with U.S. Dollars in locally collectible funds.

14.11 Entire Agreement. This Interline Agreement represents the parties’ entire agreement with respect to the subject matter hereof. There are no other agreements or promises, written or oral, incorporated herein except as specifically set forth in this Interline Agreement.

14.12 Severability. If any provision of this Interline Agreement is declared by a court of competent jurisdiction to be illegal, unenforceable or void against the Company or one or more Contracting Airlines (including without limitation in the event of a bankruptcy of any Contracting Airline), that provision, to the extent necessary, shall be modified so as to be enforceable and as nearly as possible reflect the original intention of the parties hereto, it being agreed and understood by the parties hereto that (i) this Interline Agreement and all the provisions hereof shall be enforceable in accordance with their respective terms to the fullest extent permitted by law, and (ii) the remainder of this Interline Agreement shall remain in full force and effect.

14.13 Limitation of Rights. Nothing in this Interline Agreement expressed or implied is intended or shall be construed to give to any person other than the Company and the Contracting Airlines any legal or equitable right, remedy or claim under or in respect of this Interline Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Company and the Contracting Airlines. Notwithstanding the foregoing, each Contracting Airline expressly authorizes the Company to assign its rights under this Interline Agreement and provide third-party beneficiary rights to enforce this Interline Agreement to any lender, trustee or other applicable party in connection with the incurrence by the Company of indebtedness for borrowed money.
14.14 Transfer of Funds and Equipment. Each of the Contracting Airlines agrees that all reserve deposits, special assessment funds or other excess funds previously held by Operator in connection with the operation of the Fuel System and/or the GSE Facility prior to the Effective Date and otherwise owed by Operator to such Contracting Airline shall be transferred by Operator to the Company to be allocated to the Reserve Funds required from such Contracting Airline pursuant to this Interline Agreement or, if applicable, held as self-assessment funds of the Company. Each of the Contracting Airlines agrees that all capital assets or personal property leased or owned by Operator in connection with the operation of the Fuel System or the GSE Facility prior to the Effective Date shall be transferred by Operator to the Company to be used in connection with the operation of the Fuel System or GSE Facility pursuant to this Interline Agreement.

[Remainder of page intentionally left blank.]
IN WITNESS WHEREOF, the Company and each of the Contracting Airlines hereto has caused a counterpart of this Interline Agreement to be executed as of the day and year first above written.

COMPANY:

RSW FUEL COMPANY LLC, a Delaware limited liability company

By: __________________________
Name: Howard Haglund
Title: Chairperson, Fuel Committee
SIGNATURE PAGE TO Southwest Florida International Airport (RSW) Fuel System Interline Agreement:

CONTRACTING AIRLINE:

__________________________________
a corporation organized under the laws of

__________________________________
By:
Name:
Title:

Address for Notices:

Acceptance Date:____________________
This FIRST AMENDMENT TO FUEL SYSTEM INTERLINE AGREEMENT (the "First Amendment") is entered into effective as of __________, 2019 by and among the CONTRACTING AIRLINES and RSW FUEL COMPANY LLC, a Delaware limited liability company (the “Company”) as of the date hereof and the Persons who become Contracting Airlines in accordance with the provisions of the Fuel System Interline Agreement (the “Contracting Airlines”). All capitalized terms shall have the meaning provided in the Interline Agreement unless otherwise specified in this First Amendment.

RECITALS

WHEREAS, the Contracting Airlines entered into the Fuel System Interline Agreement as of August 10, 2011 (the “Interline Agreement”), in order to establish the rights and obligations of Contracting Airlines with respect to the Company in connection with the lease and maintenance, management and operation of the Fuel System at the Southwest Florida International Airport; and

WHEREAS, the Contracting Airlines desire to enter amend the Interline Agreement for the purposes set forth in this First Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the Contracting Airlines hereby agree as follows:

COVENANTS

1. Defined Terms. Article I, Section 1.1, of the Interline Agreement is amended as follows:

   a. The definition of “Associate Airline” is deleted.

   b. A new definition for “Affiliate Airline” as follows is inserted alphabetically:

      "Affiliate Airline” means an Air Carrier as to which a Member has certified (a) that such Air Carrier is controlled by, controls or is under common control with the Member or (b) that the Member has a contract with such Air Carrier pursuant to which (i) the Member has agreed to pay one hundred percent (100%) of the Fuel System obligations and other significant obligations of such Air Carrier with respect to specified flights of such Air Carrier at the Airport and (ii) such Air Carrier has agreed to operate such flights on behalf of the Member, and that the Member’s agreements with such Air Carrier involve significant obligations and business purposes other than to enable such Air Carrier to obtain the Member’s price for use of the Fuel System.
2. **Other Changes.** All references to “Associate Airline” in the Interline Agreement are replaced in full by the term “Affiliate Airline.” More particularly, the following sections of the Interline Agreement are amended by changing references to “Associate Airline” to “Affiliate Airline”:

   a. The definition of “Gallonage”.

   b. The definition of “Itinerant User”.

   c. The definition of “Majority-In-Interest”.

   d. The definition of “Non-Contracting User Agreement”.

   e. The definition of “Super-Majority-In-Interest”.

   f. The definition of “User”.

   g. Section 3.2, “Equipment Compatibility”.

   h. Section 4.1, “Non-Contracting Users”.

   i. Section 4.2, “Non-Contracting User Agreement”.

   j. Section 4.3, “Servicing Companies”.

   k. Section 4.5, “System Use Charge”.

   l. Section 5.1, “Fuel Suppliers”.

   m. Section 7.7, “Payments”.

   n. Section 7.9, “Reserve Funds”.

   o. Section 7.10, “Reserve Funds Amount”.

   p. Section 7.12, “Associate Airlines”.

3. **Article 7 Liability for Fees and Charges, Section 7.3 Liability for Costs of the Agreement** is deleted and replaced in its entirety as follows:

   **7.3 Liability for Costs**

   . The Net Facilities Charge will be allocated to and paid by each Contracting Airline according to the following cost sharing formula:
i. Ten percent (10%) of the Net Facilities Charge for each month will be allocated pro rata based on then current number of Members in good standing in the Company; and

ii. Ninety percent (90%) of the Net Facilities Charge for each month will be allocated pro rata based on the proportion that each Contracting Airline’s Gallonage for that month bears to the total Gallonage for that month.

4. No Other Amendments; Confirmation. Except as expressly modified or waived hereby, the provisions of the Agreement are and shall remain in full force and effect.

5. Governing Law. This First Amendment and the Interline Agreement is to be governed by and construed under the laws of the State of Delaware, U.S.A., and for all purposes shall be construed in accordance with the internal laws and decisions of said state, without regard to principles of conflicts of law. The parties consent to the jurisdiction of the courts of the State of Delaware or the federal courts located within the State of Delaware and waive any claim of lack of jurisdiction or forum non conveniens.

6. Counterparts. This First Amendment may be executed by one or more of the Contracting Airlines on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This First Amendment may be delivered by facsimile or other electronic transmission of the relevant signature pages hereof.

7. Headings. Section headings in this First Amendment are included herein for convenience of reference only and shall not constitute a part of this First Amendment for any other purpose.

**********
IN WITNESS WHEREOF, the Contracting Airlines have caused this First Amendment to the Fuel System Interline Agreement to be duly executed by their respective officers thereunto duly authorized, effective as of the date first above written.

CONTRACTING AIRLINE:

____________________________,
a [corporation / limited liability company]
organized under the laws of
_________________________

By:
Name:
Title:
11. RECOMMENDED APPROVAL

DEPUTY EXEC DIRECTOR  COMMUNICATIONS AND MARKETING  OTHER  FINANCE  PORT ATTORNEY  INTERIM EXECUTIVE DIRECTOR

Gary E. Duncan  Victoria B. Moreland  N/A  Brian W. McGonagle  Gregory S. Hagen  Benjamin R. Siegel

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

APPROVED
APPROVED as AMENDED
DENIED
OTHER

13. PORT AUTHORITY ACTION:

APPROVED
APPROVED as AMENDED
DENIED
DEFERRED to
OTHER
reliability of the generators or other equipment the fuel is placed in. As a best management practice, NFPA-110 recommends diesel fuel, at a minimum annually, be cleaned, filtered and tanks polished. Diesel fuel polishing is the process used to remove the water, sediment, and microbial contamination from both the diesel fuel and the bulk storage containers. LCPA schedules fuel polishing annually on all of the diesel bulk storage tanks and semi-annually on the three terminal generator diesel fuel tanks. Additional fuel polishing may be conducted on an as needed basis. The annual expense for this service is expected to range between $23,000 to $40,000.

Staff recommends the Board award the Fuel Tank Polishing Service Provider Agreement to 1800 FUELGUY, LLC d/b/a TANK KLEEN for an initial one-year term and delegate authority to Executive Director or designee to extend the term of the Agreement when determined in the best interest of the Authority on an annual basis for up to three, one-year extension terms under the same terms and conditions, including pricing.

Attachments:
(1) Bid Tabulation of RFB 19-15LD
(2) Master RFB 19-15 Fuel Tank Polishing
(3) Submittal -1800 FuelGuy dba TANK KLEEN - RFB 19-15LD
(4) 1800 FUELGUY, LLC d/b/a TANK KLEEN Service Provider Agreement
Having carefully examined the solicitation documents, Bidder proposes to furnish the following goods and/or services in accordance with the specifications set forth herein.

Pricing shall be all-inclusive to include, filtering, cleaning, sampling and polishing and shall include all labor, equipment, supplies, overhead, profit, material, and any other incidentals required to perform and complete all work as specified in the solicitation documents.

All prices will be bid at the nearest whole penny. In the event of an addition error, the error will be corrected and the base bid updated to reflect the correct total base bid.

The Authority will only accept bids submitted on non-altered bid forms provided by the Authority. Bids submitted on other forms, other than those provided by the Authority may be deemed non-responsive and ineligible for award.

Capacity(ies) noted are estimated for bidding purposes only. Final payment will be based price per service, per tank. It shall be the Vendor's responsibility to verify all dimensions and submit questions for clarifications if necessary.

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<tr>
<th>SPCC Plan Identifier</th>
<th>Location</th>
<th>Container Type</th>
<th>Contents</th>
<th>Construction Type</th>
<th>Capacity (Gallons)</th>
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Bell Performance Inc.

One Source Solutions, LLC

1800 Fuel Guy dba Tank Kleen
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**TOTAL BASE BID (actual)**

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1. SPCC Plan Identifier is the name of the bulk storage container, mobile/portable bulk storage container areas, or oil-filled equipment and the associated piping.
2. The numbers of drums and aggregate capacities for drum storage areas are representative of what is typically present and may vary.
3. Underground Storage Tanks (USTs) are subject to the United States EPA regulations for USTs and therefore exempt from SPCC regulations.
4. The pump manufacturer indicated that the storage capacity for this pump type ranges from 70-100 gallons.
REQUEST FOR BIDS (RFB)

RFB 19-15LD

FOR

FUEL TANK POLISHING
FOR LEE COUNTY PORT AUTHORITY
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

DATED: August 16, 2019

PURCHASING OFFICE
Lori DeLoach, CPPB, Senior Procurement Agent (Designated Contact)

TELEPHONE: (239) 590-4555
FAX NUMBER: (239) 590-4539

SUBMITTALS DUE: Tuesday, September 03, 2019, TIME: 2:00 P.M., LOCAL TIME
PRE-BID MEETING: There is no Pre-Bid Meeting for this Project
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PART A – GENERAL INFORMATION AND CONDITIONS ............................................................................................................ 3
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PART E – FORMS Note: These forms must be submitted with the Bidder’s Bid submittal .......................................................... 16
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  FORM 2: BID FORM ............................................................................................................................................................ 17
  FORM 3: LOBBYING AFFIDAVIT ........................................................................................................................................ 20
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  FORM 6: LOCAL PREFERENCE AFFIDAVIT .......................................................................................................................... 23
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PART A – GENERAL INFORMATION AND CONDITIONS

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

BID OPENING: Tuesday, September 03, 2019, 2:00 P.M., LOCAL TIME THIRD FLOOR CONFERENCE ROOM, 11000 TERMINAL ACCESS ROAD, SUITE 8671, FORT MYERS, FL 33913-8899

2. DELIVERY OF BIDS  
The delivery of the sealed bid to the Lee County Port Authority prior to the deadline is solely and strictly the responsibility of the Bidder. The deadline for delivery of all bids is 2:00 p.m., local time, Tuesday, September 03, 2019.

One (1) original and one (1) identical electronic copy of bid in PDF format as a single file on a USB flash/travel drive must be delivered to the address indicated below. In case of discrepancy in content between the original hard copy and the USB flash/travel drive, the original hard copy will govern. All bids must be sealed and marked: RFB 19-15LD, Fuel Tank Polishing for Lee County Port Authority at Southwest Florida International Airport. All bids must be delivered to:

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

Electronically submitted or faxed bids will not be considered.

Bidders are advised that the United States Postal Service and even Express Mail Services may not deliver your bid in a timely manner. Bidders are cautioned to plan necessary delivery time accordingly.

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

Any bid received after the deadline for submittal of bids will not be considered.
4. **INQUIRIES/CLARIFICATION**
Except during a scheduled prebid meeting, the Authority will not respond to oral inquiries concerning this RFB. Bidders may submit written email inquiries, or submit written inquiries by U.S. mail, regarding this RFB to the designated Purchasing Office contact indicated on the cover page via email: LKDeLoach@FlyLCPA.com. The Authority may choose not to respond to written or faxed or email inquiries received after **2:00 pm, local time, Monday, August 25, 2019.**

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

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

6. **COST OF PREPARATION**
The cost of preparing a bid in response to this RFB shall be borne entirely by the Bidder.

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

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

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

9. **GENERAL CIVIL RIGHTS CLAUSE**
The successful Bidder agrees to comply with pertinent statues, 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 though the completion of any resulting contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.
10. SUBMITTAL OF BIDS
Bids shall be submitted in a sealed envelope marked "Sealed Bid", identified by the name and address of the firm bidding, bid title, bid number, and the date and time of bid opening. Sealed Bid packages are to contain one (1) original and one (1) identical electronic copy in PDF format as a single file on a USB flash/travel drive consisting of the following:

- **Form 1** Bidder’s Certification
- **Form 2** Official Bid Form
- **Form 3** Lobbying Affidavit
- **Form 4** Public Entity Crimes Form
- **Form 5** Scrutinized Companies Certification
- **Form 6** Local Vendor Preference Affidavit
- **Form 7** Professional References
- **Form 8** Optional Form – No Bid Submission

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

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

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

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

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

13. TERMINATION FOR CONVENIENCE
The Authority may cancel any agreement resulting from this RFB at its discretion upon giving thirty (30) calendar days written notice to the successful Bidder. In addition, the Authority reserves the right during the term of the agreement to terminate the agreement with any single successful Bidder and award the agreement to the next ranking Bidder if deemed to be in the Authority’s best interest.

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

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

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

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

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

17. RESERVATION OF RIGHTS
The Authority reserves the right to reject any and/or all bids, accept or reject any alternates, waive irregularities and technicalities if in the Authority’s sole judgement, is in the best interest of the Authority and conforms to applicable state and local laws or regulations.

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

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

- Failure to submit Bidder’s certification with bid submittal
- Lobbying the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Authority Request for Bids
- Collusion with the intent to defraud or other illegal practices upon the part of any firm submitting a bid
- Being on the Convicted Vendors List
• Being on any Scrutinized Companies List or otherwise ineligible to submit a bid to provide services under Section 287.135, Florida Statutes

• Not being properly licensed by the State of Florida or Lee County prior to submitting a bid

• Not being registered to do business in the State of Florida prior to submitting a bid

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

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

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

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

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

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

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

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

Details regarding the bid protest policy are contained within the Lee County Port Authority Purchasing Manual, which is available for inspection and/or copying at the Lee County Port Authority Purchasing Office, 11000 Terminal Access Road, Suite 8671, 3rd Floor, Fort Myers, Florida, 33913, telephone (239) 590-4555.

Failure to follow the bid protest procedure requirements within the time frames prescribed herein as established by Lee County Port Authority shall constitute a waiver of your protest and resulting claims.

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

23. **PAYMENT**
The accepted bid price for the scope of work to be provided will be paid to the successful Bidder after completion and acceptance of the work and upon receipt of the successful Bidder's invoice. All invoices, to include purchase order number, shall be submitted to Lee County Finance Department, PO Box 2463, Fort Myers, Florida, 33902.

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

25. **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.

26. **ESTIMATED QUANTITIES**
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. All items listed for purchase are on an “as-needed” and/or “as funds permit” basis and the Authority may order all, or none, of the items or services described.
27. NONEXCLUSIVITY OF AGREEMENT
The successful Bidder understands and agrees that any resulting contractual relationship is nonexclusive and the Lee County Port Authority reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the Lee County Port Authority.

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

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

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

a. Bids showing omissions, alterations of form, additions not specified, or required conditional or unauthorized alternate bids.

b. Bids quoting prices that substantially deviate, either higher or lower, from those included in the bids of competing Bidders for the same line item unit costs.

c. Bids where 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.

31. BID EVALUATION
Upon evaluation of all bids received, a Notice of Intent to Award may be made to the lowest responsible Bidder(s) whose bid(s) is responsive to the Request for Bids and whose qualifications indicate that the award will be in the best interest of the Authority, in the Authority's sole judgment.

The Authority reserves the right to award to one or multiple bidders based upon lowest price, in which case the status of 'Primary' and 'Secondary' will be assigned, as appropriate. When a Primary/Secondary award is made, the Primary will be the Authority's first contact for the assignment of any work required under the Service Provider Agreement. If the Primary is unable
to fulfill the Authority’s need or meet the Authority’s timeline, the Secondary is the next order of contact. Additionally, the selection order may be changed at any time during the term of the Service Provider Agreement as a result of deficient or non-compliant performance.

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

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

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

32. EXECUTION OF THE CONTRACT
   The successful Bidder(s) shall execute and return the Service Provider Agreement within ten (10) calendar days from issuance of the notice of intent to award the bid. The successful Bidder will be required to execute the Service Provider Agreement in substantially the form attached, unless amended during the bid process and prior to the opening of bids. Failure of the successful Bidder to execute the service provider agreement or contract 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.

Upon receipt of the agreement executed by the successful Bidder, the Authority shall complete the execution of the awarded agreement in accordance with local laws or ordinances, and return one fully executed original agreement, along with the bid bond, to the Bidder. Delivery of the fully executed awarded agreement to the Bidder shall constitute the Authority’s approval to be bound by the successful Bidder's bid and the terms of the contract.

[END of PART A.]
PART B – SPECIAL INSTRUCTIONS AND REQUIREMENTS

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

1. HOLD HARMLESS AND INDEMNIFICATION: Bidder agrees through submission of its bid, to indemnify, hold harmless and defend Authority and Lee County, Florida and their respective commissioners, officers, agents, and anyone directly or indirectly employed by either of them, from and against any and all claims, injuries, liabilities, damages, demands, losses, costs or actions, either at law or in equity, including, but not limited to court costs and reasonable attorney’s fees, that may be made or brought at any time in the future by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, due to any negligence, wrongful conduct, or intentional act or omission, or based on any act of fraud or defalcation of the Bidder and persons employed or utilized by the Bidder in the performance of any contract awarded under this Request for Bids.

2. AIR OPERATIONS AREA (AOA) SECURITY MAINTENANCE: Authority will provide temporary badges for the successful Bidder’s employees with a valid driver’s license as identification.

3. TERM: The initial term of the agreement will be for a one (1) year term with an option reserved to the Authority to extend the term of the agreement for three (3) additional one-year renewal periods. The pricing shall be firm and fixed for the initial term of the contract. To exercise its option to renew, the Authority shall notify the successful bidder in writing at least thirty (30) days in advance of the expiration date of the initial term or any extension term. Extension of the Agreement for the renewal periods will be upon the same pricing, terms and conditions.

4. METHOD OF AWARD: The award of this Request for Bids shall be made to the lowest, responsive and responsible Bidder. To be responsive, the Bidder shall meet all requirements of this Request for Bids. The low bid will be based on the overall lowest total base bid. Equivalent items will be considered and may be approved by the Port Authority, provided descriptive literature and specifications accompany the bid. Acceptability of equivalent items is determined at the sole discretion of the Authority.

5. PURCHASE ORDER: Purchase orders will be issued on an as needed basis for actual services required. Actual orders for polishing of the fuel tanks listed on the Bid Form are neither guaranteed nor implied. All orders are on “as needed” and “as funds permit” basis. The Authority may order all, some, or none of the units to be polished.

6. INSURANCE: All Bidders should furnish proof of acceptable insurance. A copy of the Bidder’s current insurance certificate or a statement from the Bidder’s insurance company verifying the firm's ability to obtain the insurance coverage as stated herein, should be submitted with the bid.

Each Bidder shall provide evidence of its ability to furnish the following minimum insurance coverage, either under existing policies or by virtue of a specific project policy, and with deductible limits that are acceptable to the Authority:
Automobile Liability $5,000,000;
Commercial General Liability Per occurrence, $2,000,000, Aggregate, $4,000,000;
Pollution Liability $2,000,000;
Work performed Airside will require a minimum of $5,000,000 in liability coverage, and;
Workers' Compensation in accordance with Florida statutory requirements.

The insurance provided will include coverage for all parties employed by the Bidder. At the discretion of the Authority, all insurance limits may be reevaluated at any time during the term of the agreement.

An insurance certificate on an approved form is required from the successful Bidder in the amounts stated above. The form must be properly executed and submitted by the insurance company and successful Bidder within ten (10) days after notification of the Lee County Port Authority’s intent to award the agreement. The appointed insurance agent or carrier shall be duly licensed to provide coverage and honor claims within Florida. The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory; a waiver of subrogation in favor of the Authority will also be required. **The Lee County Port Authority shall be named as an additional insured on the policy.**

The certificate holder shall be Lee County Port Authority, Attn: Risk Manager (riskmanagement@flylcpa.com), 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913.

[END OF PART B.]
PART C - PROJECT INFORMATION AND REQUIREMENTS

RFB 19-15LD
FUEL TANK POLISHING FOR THE LEE COUNTY PORT AUTHORITY
AT SOUTHWEST REGIONAL INTERNATIONAL AIRPORT

SCOPE OF WORK

Lee County Port Authority requires the services of a qualified vendor to provide all labor, materials and equipment to clean, filter, polish and remediate fuel tanks in accordance with the Scope of Work.

1. **Filtering.** The successful Bidder will be required to remove free water, moisture, sediment and other contaminants from the fuel through a filter down to 1 micron (nominal). Filter size will be determined based on the type of contaminants. The amount of fuel within each tank shall be turned over (or processed) three to five times as necessary to properly filter out contaminants.

2. **Cleaning.** The successful Bidder shall use suction and discharge hoses to create a flow through the tanks that are being cleaned. During the suction process, the suction wand must be manipulated around the tank in order to reach as much area of the tank as possible.

3. **Sampling.** The successful Bidder will take fuel samples from the center and bottom of the tank when the polishing is complete and send to a third party independent lab for testing. All results and reports must be forwarded to the Authority on the same day of receipt.

   3.1. Lab analyses must be provided by a third party that conforms to ASTM D975 and AHCA standards including:
      3.1.1. API gravity,
      3.1.2. Cetane index,
      3.1.3. Corrosion copper strip,
      3.1.4. Dissolved water by Karl Fischer titration determination,
      3.1.5. Distillation,
      3.1.6. 90% recovery,
      3.1.7. Flash point,
      3.1.8. Microbial growth,
      3.1.9. Sulfur content by Fluorescence,
      3.1.10. Visual appearance, and
      3.1.11. Water & sediment.

4. **Polishing.** The successful Bidder must be responsible for polishing tanks to the satisfaction of the Authority.

5. **Safety.** The successful Bidder vendor must follow industry standards ANSI/API and ensure safe operation of all equipment at all times.
The selected vendor must comply with federal, state and local laws and regulations regarding the safe handling and disposal of petroleum products and/or contaminated waste water.

6. **Access to Site**: The selected Vendor’s employees will be permitted unrestricted access to all areas of the site needed to perform scope of work.

7. The successful Bidder is required to perform services in accordance with this scope of work. No changes in scope or in pricing that vary from the vendor’s accepted bid will be permitted unless authorized in writing by the Authority. All invoices, reports, and other written documents made must contain the purchase order and Authority SPCC plan identifier number.

[END OF SECTION C.]
PART D - DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

Not applicable to this solicitation.

[END OF PART D]
PART E – FORMS Note: These forms must be submitted with the Bidder’s Bid submittal.

FORM 1: BIDDER’S CERTIFICATION

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

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

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

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

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

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

NAME OF BUSINESS

MAILING ADDRESS

AUTHORIZED SIGNATURE

CITY, STATE & ZIP CODE

NAME, TITLE, TYPED

TELEPHONE NUMBER / FAX NUMBER

FEDERAL IDENTIFICATION #

EMAIL ADDRESS

State of: County of:

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

Signature of Notary Serial/Commission No.
Having carefully examined the solicitation documents, Bidder proposes to furnish the following goods and/or services in accordance with the specifications set forth herein. Pricing shall be all-inclusive to include, filtering, cleaning, sampling and polishing and shall include all labor, equipment, supplies, overhead, profit, material, and any other incidentals required to perform and complete all work as specified in the solicitation documents.

All prices will be bid at the nearest whole penny. In the event of an addition error, the error will be corrected and the base bid updated to reflect the correct total base bid.

The Authority will only accept bids submitted on non-altered bid forms provided by the Authority. Bids submitted on other forms, other than those provided by the Authority may be deemed non-responsive and ineligible for award.

Capacity(ies) noted are estimated for bidding purposes only. Final payment will be based price per service, per tank. It shall be the Vendor's responsibility to verify all dimensions and submit questions for clarifications if necessary.

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<th>SPCC Plan Identifier ¹</th>
<th>Location</th>
<th>Container</th>
<th>Type</th>
<th>Contents</th>
<th>Construction</th>
<th>Capacity (Gallons) ²</th>
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</tr>
<tr>
<td>10</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage</td>
<td>Generator Day Tank</td>
<td>Diesel</td>
<td>Single-walled steel</td>
<td>85</td>
<td>$</td>
</tr>
</tbody>
</table>
## SPCC Plan Identifier 1

<table>
<thead>
<tr>
<th>Location</th>
<th>Container Type</th>
<th>Contents</th>
<th>Construction</th>
<th>Capacity (Gallons)</th>
<th>Total Price Per Tank, Per Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 Electrical Vault</td>
<td>Fixed Bulk Storage</td>
<td>AST</td>
<td>Diesel, Single-walled steel with concrete outer wall</td>
<td>1000</td>
<td>$</td>
</tr>
<tr>
<td>11a Electrical Vault</td>
<td>Fixed Bulk Storage</td>
<td>Generator Day Tank</td>
<td>Diesel</td>
<td>Single-walled steel</td>
<td>85</td>
</tr>
<tr>
<td>12 Concourse B</td>
<td>Fixed Bulk Storage</td>
<td>UST</td>
<td>Diesel, Double-walled fiberglass</td>
<td>4000</td>
<td>$</td>
</tr>
<tr>
<td>13 Concourse B</td>
<td>Fixed Bulk Storage</td>
<td>AST</td>
<td>Diesel, Double-walled steel</td>
<td>250</td>
<td>$</td>
</tr>
<tr>
<td>14 Concourse C</td>
<td>Fixed Bulk Storage</td>
<td>UST</td>
<td>Diesel, Double-walled fiberglass</td>
<td>4000</td>
<td>$</td>
</tr>
<tr>
<td>15 Concourse C</td>
<td>Fixed Bulk Storage</td>
<td>AST</td>
<td>Diesel, Double-walled steel</td>
<td>250</td>
<td>$</td>
</tr>
<tr>
<td>16 Concourse D</td>
<td>Fixed Bulk Storage</td>
<td>UST</td>
<td>Diesel, Double-walled fiberglass</td>
<td>4000</td>
<td>$</td>
</tr>
<tr>
<td>17 Concourse D</td>
<td>Fixed Bulk Storage</td>
<td>AST</td>
<td>Diesel, Double-walled steel</td>
<td>250</td>
<td>$</td>
</tr>
<tr>
<td>38 Parking Garage</td>
<td>Fixed Bulk Storage</td>
<td>AST</td>
<td>Diesel, Single-walled steel</td>
<td>2000</td>
<td>$</td>
</tr>
<tr>
<td>40 ARFF</td>
<td>Fixed Bulk Storage</td>
<td>AST</td>
<td>Diesel, Double-walled steel</td>
<td>4000</td>
<td>$</td>
</tr>
<tr>
<td>41 ARFF</td>
<td>Fixed Bulk Storage</td>
<td>AST</td>
<td>Diesel, Double-walled steel</td>
<td>2000</td>
<td>$</td>
</tr>
<tr>
<td>42 Ramp</td>
<td>Portable Bulk Storage</td>
<td>Equipment reservoir for ground power unit</td>
<td>Diesel, Single-walled steel</td>
<td>70</td>
<td>$</td>
</tr>
<tr>
<td>43 Ramp</td>
<td>Portable Bulk Storage</td>
<td>Equipment reservoir for ground power unit</td>
<td>Diesel, Single-walled steel</td>
<td>70</td>
<td>$</td>
</tr>
<tr>
<td>44 Vehicle Maintenance</td>
<td>Portable Bulk Storage</td>
<td>Equipment reservoir for ground power unit</td>
<td>Diesel, Single-walled steel</td>
<td>100</td>
<td>$</td>
</tr>
<tr>
<td>45 Vehicle Maintenance</td>
<td>Portable Bulk Storage</td>
<td>Equipment reservoir for ground power unit</td>
<td>Diesel, Single-walled steel</td>
<td>100</td>
<td>$</td>
</tr>
</tbody>
</table>
### SPCC Plan

<table>
<thead>
<tr>
<th>SPCC Plan Identifier</th>
<th>Location</th>
<th>Container Type</th>
<th>Type</th>
<th>Contents</th>
<th>Construction</th>
<th>Capacity (Gallons)</th>
<th>Total Price Per Tank, Per Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>Vehicle Maintenance</td>
<td>Portable Bulk Storage</td>
<td>Equipment reservoir for ground power unit</td>
<td>Diesel</td>
<td>Single-walled steel</td>
<td>100</td>
<td>$</td>
</tr>
<tr>
<td>47</td>
<td>Toll Plaza</td>
<td>Fixed Bulk Storage</td>
<td>AST</td>
<td>Diesel</td>
<td>Single-walled steel</td>
<td>155</td>
<td>$</td>
</tr>
</tbody>
</table>

**TOTAL BASE BID**

(Use Words to Write Total)

---

1. **SPCC Plan Identifier** is the name of the bulk storage container, mobile/portable bulk storage container areas, or oil-filled equipment and the associated piping.
2. The numbers of drums and aggregate capacities for drum storage areas are representative of what is typically present and may vary.
3. Underground Storage Tanks (USTs) are subject to the United States EPA regulations for USTs and therefore exempt from SPCC regulations.
4. The pump manufacturer indicated that the storage capacity for this pump type ranges from 70-100 gallons.
FORM 3: LOBBYING AFFIDAVIT

STATE OF: __________________________

COUNTY OF: ________________________

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

AFFIANT

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

Signature of person taking acknowledgment

______________________________

Name typed, printed, or stamped

______________________________

(Title or rank)

Signature of Notary   (Serial or Commission No.)

NOTE: THIS FORM IS REQUIRED FROM ALL BIDDERS
FORM 4: PUBLIC ENTITY CRIMES FORM

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

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

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

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

BIDDER'S NAME: ____________________________
FORM 5: BIDDER’S SCRUTINIZED COMPANIES CERTIFICATION

BIDDER’S CERTIFICATION

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

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

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

[Signature]

Notary Public
State of __________________
County of _________________

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

[stamp or seal]

[Signature of Notary Public]

[Typed or printed name]
FORM 6: LOCAL PREFERENCE AFFIDAVIT

The firm submitting the attached bid is either (please check one):

☐ A firm whose principal place of business is located within the boundaries of Lee County, Florida.

Please identify the firm name and physical address below:

________________________________________
________________________________________
________________________________________
________________________________________ (in Lee County, Florida)

☐ A firm that has provided goods or services to Lee County or the Lee County Port Authority on a regular basis for the preceding consecutive three (3) years and has the personnel, equipment, and materials located within the boundaries of Lee County sufficient to constitute a present ability to perform the service or provide the goods for this project.

Please provide the following information:

Number of employees currently working in Lee County full time = _____

Projects completed in Lee County over the last consecutive three (3) years:

________________________________________ Began in 20__ Completed in 20__
________________________________________ Began in 20__ Completed in 20__
________________________________________ Began in 20__ Completed in 20__
________________________________________ Began in 20__ Completed in 20__
________________________________________ Began in 20__ Completed in 20__
________________________________________ Began in 20__ Completed in 20__

Current Lee County location of equipment, materials and personnel that will be used full time on this project:

________________________________________
________________________________________
________________________________________
________________________________________ (in Lee County, Florida)

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

Please identify the firm name and physical address below:

________________________________________
________________________________________
________________________________________
________________________________________
________________________________________

☐ Not a Local Vendor as defined by Lee County Ordinance 00-10, as amended by Lee County Ordinance Nos. 08-26 and 17-16.
FORM 6: LOCAL PREFERENCE AFFIDAVIT (Continued)

_______________________________________
Printed Name

_______________________________________
Title

_______________________________________
Signature

Notary Public – State of _______________________
County of _______________________
Sworn to and subscribed before me this ______ day of ________________, 20 __________
Personlly known ________________________ or produced identification _____________________.
My Commission Expires _________________
(Type of identification) _______________________

__________________________________________
Printed, typed or stamped commissioned name of Notary Public
FORM 7: DIRECTIONS for Completion of Professional Reference Form

Bidders are required to provide this reference request form to a minimum of three clients with whom they have recently completed a similar project. **DO NOT** use current Lee County Port Authority employees as references.

References **ARE NOT** to be submitted with Bidder’s Request for Bid package; the client providing the reference will return this form via email directly to the Purchasing Agent listed on the form.

It is the Bidder’s responsibility to confirm directly with the client that their required forms have been submitted. **DO NOT** contact the Authority directly to request if references have been submitted.

1) **Bidder to complete:** *(prior to sending to reference respondent)*
   a) Section 1 – Reference Respondent/client information;
   b) Section 2 – Bidder’s Name and client Project Name

2) Reference respondent (Bidder’s client) to complete Section 3; complete professional reference form, additional pages may be used if needed and submit form **DIRECTLY** to Lee County Port Authority Purchasing Agent’s email listed on form. References should not be returned by the vendor.

   **A minimum of three (3) reference responses are required.**

Failure to have references submitted directly to Lee County Port Authority Purchasing Agent’s email, on or before the due date noted on the Professional Reference form, may cause your firm to be considered nonresponsive.
FORM 7: PROFESSIONAL REFERENCES

RFP 19-15LD
FUEL TANK POLISHING
FOR LEE COUNTY PORT AUTHORITY
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

<table>
<thead>
<tr>
<th>Section 1</th>
<th>Client/Reference Respondent Information – Please Print Legibly</th>
<th>Please return completed form to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name &amp; Title:</td>
<td></td>
<td>Purchasing Agent: Lori DeLoach</td>
</tr>
<tr>
<td>Company:</td>
<td></td>
<td>Due Date: September 3, 2019</td>
</tr>
<tr>
<td>Email:</td>
<td></td>
<td>Total # Pages:</td>
</tr>
<tr>
<td>Phone:</td>
<td></td>
<td>Phone: 239-590-4555 Fax: 239-590-4539</td>
</tr>
</tbody>
</table>

Section 2

| Bidder Name: | |
| Client's Project Name: | |

You or your company have been given as a reference on the project identified above. Please provide responses in section 3:

Section 3

1. How long have you done business with this company?

2. What type(s) of business have you done with this company?

3. What is your overall impression of this company’s qualifications?

<table>
<thead>
<tr>
<th>E (Excellent)</th>
<th>G (Good)</th>
<th>S (Satisfactory)</th>
<th>NS (Not Satisfactory)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. How would you rate the Company’s overall service quality?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>5. How would you rate their supervisors and staffing?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>6. How would you rate their communication?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>7. How would you rate their preventative maintenance program?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>8. How would you rate their responsiveness?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>9. How would you rate their invoicing and reporting process?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>10. WOULD YOU USE THIS COMPANY AGAIN?</td>
<td>YES</td>
<td>NO</td>
<td></td>
</tr>
</tbody>
</table>

11. Do you have any additional comments regarding the quality of the services his company has furnished and performed at your facility?
FORM 8: OPTIONAL FORM

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

NO BID SUBMISSION
RFB 19-15LD Fuel Tank Polishing

If you are not submitting a Bid, please indicate the reason(s) by checking any appropriate item(s) listed below and return this form to Lori DeLoach, CPPB, Senior Procurement Agent, Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 LKDeLoach@FlyLCPA.Com, (239) 590-4539 (fax).

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

______________ Services are not available through our company
______________ Our services do not meet the Scope of Services

Circle one - Scope of Services were:

<table>
<thead>
<tr>
<th>not applicable</th>
<th>too rigid</th>
<th>too vague</th>
</tr>
</thead>
<tbody>
<tr>
<td>not clearly understood</td>
<td>Insufficient time allowed for preparation</td>
<td></td>
</tr>
</tbody>
</table>

______________ Other reason(s):

How did you learn about this solicitation?

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

Name of Firm: ____________________________
Name of Individual: ____________________________
Telephone Number: __________________ Fax: __________________
Email Address: ____________________________
DATE: ____________________________
Sealed Bid Label

Cut along the outer border and affix this label to your sealed solicitation submission to identify it as a “Sealed Bid”

<table>
<thead>
<tr>
<th>SOLICITATION NO.:</th>
<th>RFB 19-15LD</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOLICITATION TITLE:</td>
<td>FUEL TANK POLISHING FOR THE LEE COUNTY PORT AUTHORITY AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT</td>
</tr>
<tr>
<td>DATE DUE:</td>
<td>September 3, 2019</td>
</tr>
<tr>
<td>TIME DUE:</td>
<td>Prior to: 2:00 PM</td>
</tr>
<tr>
<td>SUBMITTED BY:</td>
<td>(Name of Company)</td>
</tr>
<tr>
<td>e-mail address</td>
<td></td>
</tr>
<tr>
<td>DELIVER TO:</td>
<td>Purchasing Office \nLee County Port Authority \nSouthwest Florida International Airport \n11000 Terminal Access Road, Suite 8671 \nFort Myers, Florida 33913</td>
</tr>
</tbody>
</table>

Note: Submittals received after the time and date above will not be accepted.
LEE COUNTY PORT AUTHORITY

SERVICE PROVIDER AGREEMENT

FUEL TANK POLISHING FOR LEE COUNTY PORT AUTHORITY AT

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

RFB 19-15LD

THIS AGREEMENT is entered this _____ day of _____________, 2019, between the LEE COUNTY PORT AUTHORITY, a political subdivision and special district of the State of Florida ("AUTHORITY"), at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and _____________________, a ______________ corporation, authorized to do business in the State of Florida, ("PROVIDER"), at ______________, Federal Identification Number ______________.

WITNESSETH

WHEREAS, the Authority desires to obtain fuel tank polishing services from Provider as described below for the Southwest Florida International Airport in Fort Myers, Florida; and,

WHEREAS, the Provider certifies that it has been granted and possesses valid, current licenses to do business in the State of Florida and in Lee County, Florida, issued by any applicable State Boards or Government Agencies responsible for regulating and licensing the services to be provided by the Provider under this Agreement; and,
WHEREAS, Provider has reviewed the services required under this Agreement and has submitted a Bid to provide the requested services, and states that it is qualified, willing and able to provide and perform all such services and provide any goods required according to the provisions, conditions and terms below, and in accord with all governing federal, state and local laws and regulations; and,

WHEREAS, the Provider has been selected to provide the services described below as the result of a competitive selection process by Authority that complies with any applicable Florida Statues and the Authority's Purchasing Policy, as approved and put into effect by the Authority's Board of Port Commissioners.

NOW, THEREFORE, in consideration of the foregoing and the terms and provisions as contained herein, and the mutual consideration described below, the parties agree as follows:

1.0 RECITALS

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

2.0 DEFINITIONS

2.1 AUTHORITY shall mean the Lee County Port Authority and its governing Board of Port Authority Commissioners.

2.2 PROVIDER shall mean the individual, firm or entity offering services that it shall be legally obligated, responsible, and liable for providing and performing and any and all of the services, work and materials, including services and/or the work of sub-contractors, required under this Agreement.
2.3 **BASIC SERVICES** shall mean all services, work, materials and all related administrative activities that are necessary to perform and complete the services required by the Scope of Services of this Agreement.

2.4 **ADDITIONAL SERVICES** shall mean any additional services that the Authority may request from Provider and authorize, in writing, which are not included in the Scope of Services.

2.5 **SUPPLEMENTAL AGREEMENT** shall mean a written document executed by both parties to this Agreement setting forth such changes to the Scope of Services as may be requested and authorized in writing by the Authority.

3.0 **SCOPE OF SERVICES**

Provider hereby agrees to perform the services set forth in Exhibit "A", entitled "Scope of Services", which is attached hereto and made a part of this Agreement.

Authority will authorize all Basic Services under this Agreement by issuing a purchase order detailing the services to be performed and the schedule for performing those services. Compensation for services will be paid in accord with Section 8.0 below, and the compensation schedule set forth in Exhibit "B", which is attached and made a part of this Agreement.

4.0 **REQUEST FOR BIDS AND PROVIDER'S BID - INCORPORATION BY REFERENCE**

The terms of the Request for Bids, and Provider's Bid received in response, 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 this Agreement and the
Request for Bids; or between this Agreement and Provider's Bid; 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 those representations and this information has resulted in the selection of Provider to provide goods or perform services under this Agreement.

5.0  TERM

The term of this Agreement shall be for one (1) year commencing on the date first written above. The Authority will have the option to extend the term of this Agreement for up to three (3) additional years, in increments of one (1) year each from the expiration date of the initial term, and any extended term, on the same terms and conditions, including pricing, as the initial term. Any such extension shall be executed with the same formality as the original Agreement. If Authority decides to exercise the option to extend the term of the Agreement, it will notify the Provider no later than thirty (30) days before the expiration date of the initial term or any extended term.

6.0  OBLIGATIONS OF THE PROVIDER

The obligations of the Provider with respect to all the Basic Services and any Additional Services authorized under this Agreement shall include, but are not limited to the following:

6.1  LICENSES

The Provider agrees to obtain and maintain throughout the term of this Agreement, all such licenses as are required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, licenses required by any applicable State
Boards or other governmental agencies responsible for regulating and licensing the services provided and performed by the Provider under this Agreement.

6.2 **PERSONNEL**

(1) **Qualified Personnel** - The Provider agrees that when the services to be provided and performed relate to (a) professional service(s) which, under Florida Statutes, require 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 services to be provided under this Agreement.

Services performed under this Agreement shall be performed by Provider's own staff, unless agreed in advance by the Authority.

(2) **Project Manager** - Provider agrees to employ and designate a qualified, licensed professional to serve as Provider's project manager ("Project Manager") for this Agreement. Provider shall designate its Project Manager in writing within five (5) calendar days after receiving an executed original of this Agreement. Provider's Project Manager designation shall be executed by the proper officers of Provider, and shall acknowledge that the Project Manager shall have full authority to bind and obligate Provider on all matters arising out of or relating to this Agreement. The Project Manager shall be specifically authorized and responsible to act on behalf of Provider with respect to directing, coordinating and administering all aspects
of the services provided under this Agreement. Provider agrees that the Project Manager shall devote whatever time is required to satisfactorily manage all services provided by Provider under this Agreement. Provider 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.

Provider further agrees to promptly remove and replace the Project Manager, or any other personnel employed or retained by Provider, or any subcontractor or any personnel of any such subcontractor engaged by Provider 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.

6.3 **STANDARDS OF SERVICE**

The Provider agrees to provide and perform all services under this Agreement in accordance with 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 to be provided and/or performed by the Provider.

6.4 **CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES**

(1) **Responsibility to Correct** - The Provider agrees to be responsible for the quality, technical adequacy and accuracy, timely completion, and the coordination of all services, work and materials performed,
provided, and/or furnished by Provider. The Provider shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Provider or any persons employed by Provider or performing services at Provider’s direction under this Agreement.

(2) **Authority’s Approval Shall Not Relieve Provider of Responsibility** - Neither review, approval, nor acceptance by Authority of any services, work or materials furnished hereunder by the Provider, shall in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials. Neither the Authority’s review, approval or acceptance of, nor payment for, any part of the Provider’s services, work and materials shall 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.

6.5 **ADDITIONAL SERVICES**

If Authority requests the Provider to provide and perform services under this Agreement that are not set forth in Exhibit "A", the Provider agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the services covered under this Agreement and shall be provided and performed in accordance with
the covenants, terms and provisions as set forth in this Agreement and any Amendment(s) to this Agreement.

Additional services shall be administered and executed as Supplemental Task Authorizations under the Agreement. The Provider shall not provide or perform, nor shall the Authority incur or accept any obligation to compensate the Provider for any additional services, unless a written Supplemental Task Authorization has been executed by the parties.

Each Supplemental Task Authorization shall set forth a description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing the additional services.

7.0 AUTHORITY’S RESPONSIBILITIES

Authority shall:

7.1 Designate in writing a project manager to act as Authority's representative with respect to the issuance of Task Authorizations for services rendered under this Agreement ("Project Manager"). The Project Manager shall have exclusive authority to execute Task Authorizations, and any modifications or changes to Provider's (1) scope of services; (2) time of commencement or delivery; or (3) compensation related to services required under any Task Authorization. The Project Manager shall have authority to transmit instructions, receive information, and to interpret and define Authority's policies and decisions with respect to Provider's services under this Agreement. The Project Manager shall review and make appropriate recommendations on all requests submitted by Provider for payment for services.
7.2 The Project Manager is not authorized to, and shall not, issue any verbal orders or instructions to Provider 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 Provider hereunder; (2) the time Provider is obligated to commence and complete all such services; or (3) the compensation Authority is obligated or committed to pay Provider.

7.3 Provide all criteria and information requested by Provider 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.

7.4 Upon request from Provider, make available to Provider all available information in Authority's possession pertinent to any Task Authorization, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data concerning design or construction of a project.

7.5 Arrange access, in accord with Authority's security regulations, for Provider to enter any project site to perform services. Provider acknowledges that Authority may provide such access during times that are not the Provider's normal business hours.

7.6 Notify Provider of any defects or deficiencies in services rendered by Provider.
8.0  COMPENSATION AND METHOD OF PAYMENT

8.1  BASIC SERVICES

Authority will pay Provider for all requested and authorized basic services completed in accordance with the requirements, provisions, and/or terms of this Agreement based on the compensation schedule in Exhibit "B."

8.2  ADDITIONAL SERVICES

The Authority shall pay the Provider for all additional services, that have been requested and authorized by the Authority and agreed to in writing by both parties to this Agreement, and are completed according to the terms of compensation and payment of said additional services based on the compensation schedule set forth in Exhibit "B."

8.3  METHOD OF PAYMENT

(1)  LUMP SUM

Upon Authority's acceptance of Provider's work on any Task, Authority will pay Provider a lump sum as specified in Exhibit "B". Lump Sum Fees are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Provider as may be required and/or necessary to complete
each and every task set forth in the Scope of Services and assigned
by purchase order.

(2) **MONTHLY STATEMENTS**

If agreed by the parties, the Provider may submit not more than one
invoice to the Authority for each calendar month. The monthly invoice
shall cover services rendered and completed during the preceding
calendar month. The Provider shall submit its invoices to the
Authority's Finance Department. The Provider's invoice(s) shall be
itemized to correspond to the basis of compensation as set forth in
this Agreement, or any Amendment or Supplemental Agreement.
Invoices shall include an itemized description of the project, the
amount of time expended, and a description of the goods and
services provided. Failure by the Provider to follow these instructions
shall result in an unavoidable delay of payment by the Authority.

(3) **PAYMENT SCHEDULE**

The Authority shall issue payment to the Provider within forty-five
(45) calendar days after 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 shall notify the Provider of such objection or
exception within forty-five (45) days of receipt of the invoice. If such
objection or exception remains unresolved at the end of the forty-five (45) day period, the Authority shall withhold the disputed amount and make payment to the Provider of all amounts not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties to this Agreement.

8.4 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE AUTHORITY

In the event of termination of this Agreement for the convenience of the Authority, the Authority shall compensate the Provider for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the Provider in effecting the termination of services and work, and incurred by the submittal to the Authority of any project documents.

8.5 PAYMENT WHEN SERVICES ARE SUSPENDED

If the Authority suspends the Provider's services or work on all or part of the services required by this Agreement, the Authority shall compensate the Provider 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 such suspension.

8.6 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE IN SCOPE OF SERVICES

If the services required under this Agreement are terminated, canceled, or decreased due to: (1) termination; (2) suspension in whole or in part; and (3) and/or are modified by the subsequent issuance of Amendment(s) and/or Supplemental
Agreement(s); the Provider shall not be entitled to receive compensation for anticipated fees; profit, general and administrative overhead expenses or any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, canceled or decreased.

9.0 PROJECT SCHEDULE

9.1. Provider shall commence work under this Agreement following the date of execution of this Agreement, as shown on the date first written above and upon issuance of Authority's purchase order describing the work to be performed.

9.2. If Provider is obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of Provider, and not due to its own fault or neglect, including but not restricted to: Acts of God or of public enemies, acts of government or of Authority, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then Provider shall notify Authority in writing within seventy-two (72) hours after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Provider may have had to request a time extension.

9.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of Provider's services from any cause whatsoever, including those for which Authority may be responsible in whole or in part, shall relieve Provider of its duty to perform services or give rise to any right to damages or additional compensation from Authority. Provider's sole remedy against Authority will be the right
to seek an extension of time to its schedule. This paragraph shall expressly apply to
claims for early completion, as well as claims based on late completion.

10.0 INDEMNIFICATION

Provider shall indemnify, hold harmless and defend Authority and Lee County,
Florida, and their respective commissioners, officers, agents, and anyone employed
directly or indirectly by either of them, from and against all claims, injuries, liabilities,
damages, demands, losses, costs or actions, either at law or in equity, including, but not
limited to, court costs and reasonable 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, wrongful conduct or intentional act or omission or based on any action of
fraud or defalcation of Provider, or other persons employed or utilized by Provider in the
performance of this Agreement.

If this indemnity provision is deemed void under Florida law, then the Provider shall
indemnify and hold harmless Lee County, the 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 liabilities, damages, losses or costs
including, but not limited to, reasonable attorney’s fees, to the extent caused by the
negligence, recklessness, or intentional wrongful conduct of the Provider or persons
employed or utilized by the Provider in the performance of the services under this
Agreement.

Draft for Discussion Purposes Only
Port Authority Attorney’s Office
8/7/2019
11.0 **FAILURE TO PERFORM**

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

12.0 **PUBLIC RECORDS**

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

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

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

(2) **Building Plans** - Provider further acknowledges that Section 119.07(3)(b)1., Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams depicting internal layouts and structural elements of a public building from the disclosure requirements of the Florida Public Records Law.
(3) **Airport Security Systems** - Section 281.301, Florida Statutes, exempts information relating to the security systems for any property owned by or leased to the Authority and any information relating to the security systems for any privately-owned or leased property which is in Authority's possession, including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information, is confidential and exempt from disclosure.

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

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

13.0 **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 agent, employee, subcontractor, or invitee of the Provider, Provider shall notify the Airport's Police Department that the 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
agent, employee, subcontractor, or invitee of the Provider, Provider shall surrender any
Airport Security Identification Badge held by the Provider or by Provider's agents,
employees, subcontractors, or invitees. Should Provider fail to surrender these items
within five (5) days, the Provider shall be assessed a fee of Twenty-Five Dollars ($25.00)
per identification badge not returned. This fee will be billed to the Provider or deducted
from any money owing to the Provider, at the Authority's discretion.

14.0 ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Provider shall not assign or transfer any of its rights, benefits or obligations
hereunder, without the prior written consent of Authority. The Provider shall have the
right, subject to the Authority's prior written approval, to employ other persons and/or firms
to serve as subcontractors to Provider in connection with the Provider's performance of
services and work under the requirements of this Agreement.

15.0 PROVIDER AN INDEPENDENT CONTRACTOR

The Provider is an independent contractor and is not an employee or agent of the
Authority. Nothing in this Agreement shall be interpreted to establish any relationship
other than that of an independent contractor between the Authority and Provider, its
employees, agents, subcontractors or assigns, during or after the performance of this
Agreement.

16.0 F.A.A. NON-DISCRIMINATION CLAUSE

The Provider, for itself, its successors in interest, and assigns, as part of the
consideration hereof, agrees that it shall not discriminate on the basis of race, color,
national origin, or sex in the award and performance of any DOT-assisted contract or in
the administration of its D.B.E. program or the requirements of 49 CFR Part 26.

17.0  **F.A.A. DISADVANTAGED BUSINESS ENTERPRISE (D.B.E. CLAUSE)**

The Provider or subcontractor shall not discriminate on the basis of race, color,
national origin or sex in the performance of this contract. The Provider shall carry out
applicable requirements of 49 CFR Part 23 and Part 26 in the award and administration
of DOT-assisted contracts. Failure by the Provider 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 Port Authority deems appropriate.

18.0  **INSURANCE**

During the term of this Agreement, Provider shall provide, pay for, and maintain,
with companies satisfactory to Authority, the types of insurance described herein.
Provider further agrees to provide Authority's Risk Manager with advance written notice
of the cancellation or non-renewal of any required insurance coverage and to obtain
replacement coverage as soon as possible. All insurance shall be from responsible
companies duly authorized to do business in the State of Florida and/or responsible risk
retention group insurance companies registered with the State of Florida. Promptly after
execution of this Agreement by both parties, the Provider must obtain insurance
coverages and limits required as set out below and evidenced by properly executed
Certificates of Insurance on forms which are acceptable to the Authority's Risk Manager.
The Certificates must be signed by an Authorized Representative of the insurance
company/companies shown on the Certificates with proof that he or she is an authorized
representative thereof. In addition, copies of all insurance policies shall be provided to Authority, on a timely basis, if requested by Authority.

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 with 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 Provider from potential insurer insolvency.

All policies of insurance shall contain provisions that advance written notice shall be given to Authority of any cancellation, intent not to renew, material change or alteration, or reduction in the policies' coverages, except in the application of the Aggregate Limits provision of any policy. In the event of a reduction in the Aggregate Limit of any policy, Provider shall immediately take steps to have the Aggregate Limit reinstated to the full extent permitted under such policy. All of Provider's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include waiver of subrogation in favor of Authority.

The acceptance by Authority of any Certificate of Insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the requirements of this Agreement.
All of Provider's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include a waiver of subrogation in favor of Authority.

No work shall commence on any Task assigned under this Agreement unless and until the required Certificates of Insurance are received and approved by Authority.

18.1. INSURANCE REQUIRED

Before starting and until acceptance of any work by Authority, Provider shall procure and maintain insurance of the types and to the limits specified in paragraphs 18.2.1 through 18.2.5, inclusive below. All liability insurance policies obtained by Provider to meet the requirements of this Agreement, other than Worker's Compensation and Employer's Liability policies, shall name Authority as an additional insured as to the services of Provider under this Agreement and shall contain the severability of interests provisions.

18.2. COVERAGES

The amounts and types of insurance described below are the minimum requirements and are not intended to limit the Authority's access to additional coverage if more coverage is available. All amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

18.2.1. Commercial General Liability Insurance Provider shall maintain commercial general liability insurance. Coverage shall include, but not be limited to, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form
Property Damage including Completed Operations, Broad Form Contractual Liability and XCU Coverages. Limits of coverage shall not be less than the following:

- Each Occurrence Personal and Advertising Injury $1,000,000
- Products - Completed Operations Aggregate $4,000,000

If the General Liability insurance required herein is issued or renewed on a "claims made" form, as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of any Task under this Agreement and shall provide that in the event of cancellation or non-renewal the discovery period for insurance claims (Tail Coverage) shall be unlimited. If any work is performed airside, the Provider's coverage must be increased to $5,000,000 in liability coverage.

18.2.2. **Automobile Liability Insurance** shall be maintained by Provider 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 $1,000,000 Combined Single Limit

18.2.3. **Worker's Compensation and Employers Liability Insurance** shall be maintained by Provider during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

- Worker's Compensation
  - Employer's Liability
    - Each Accident $1,000,000
    - Disease Each Employee $1,000,000

18.2.4. Provider must use Authority's Certificate of Insurance attached as Schedule “C”, 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 Provider's insurance representatives and must be submitted for Authority's review as to acceptability. If any insurance provided under this Agreement expires prior to the completion of the Work, renewal Certificates of Insurance on an acceptable form must be furnished to Authority's Risk Manager at least thirty (30) days prior to the date of expiration. Copies of the renewal policies shall also be furnished to the Risk Manager if requested by Authority.

18.2.5. If Provider does not maintain the insurance coverages required by this Agreement, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Provider for such coverages purchased. Authority shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

19.0 **DUTIES AND OBLIGATIONS IMPOSED ON THE PROVIDER**

The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

20.0 **NOTICE REGARDING PUBLIC ENTITY CRIMES**

Section 287.133(3)(a) (1995) requires the Authority to notify Bidder/Lessee/Tenant of the provisions of Section 287.133(2)(a) F.S.
Section 287.133(2)(a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

A. Contracting to provide goods or services to a public entity.

B. Submitting a bid on a contract for construction or repair of a public building or public work.

C. Submitting bids on leases of real property to a public entity.

D. Being awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of $35,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

21.0 OWNERSHIP AND TRANSFER OF DOCUMENTS

All documents relating to the services specifically prepared or developed by the Provider under this Agreement shall be the property of the Provider, until the Provider has been paid for performing the services and work required to produce such documents.

Upon completion, suspension, or termination of this Agreement, all of the above documents, to the extent requested by the Authority, shall be delivered to the Authority or to any subsequent Provider within thirty (30) calendar days.

The Provider, at its expense, may make and retain copies of all documents delivered to the Authority for reference and internal use. Any subsequent use of the
documents and materials listed above shall be subject to the Authority’s prior review and approval.

22.0 **MAINTENANCE OF RECORDS**

The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Provider for a minimum of five (5) years from the date of termination of this Agreement, or for such period as required by law.

The Authority and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Authority deems necessary during the period of this Agreement, and during the period as set forth in the paragraph above; provided, however, such activity shall be conducted only during normal business hours of the Provider and at the expense of the Authority.

23.0 **NO THIRD PARTY BENEFICIARIES**

Nothing contained herein shall create any relationship, contractual or otherwise with, or any rights in favor of, any third party.

24.0 **APPLICABLE LAW**

This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement...
shall be brought either in the Florida state courts in Lee County, Florida, or in the United States Federal District Court for the Middle District of Florida, Fort Myers Division. The prevailing party in any such suit or action shall be entitled to recover from the other party their reasonable attorneys' fees and court costs.

25.0 PROHIBITED INTERESTS

No member, officer or employee of the Port Authority or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

26.0 LOBBYING CERTIFICATION

The Port Authority agrees that no Federal appropriated funds have been paid or will be paid by or on behalf of the Port Authority, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Port Authority to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
The Port Authority shall require that the language of this section be included in this award document and any award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

27.0 COVENANTS AGAINST DISCRIMINATION

27.1 DBE Policy. It is the policy of the Department of Transportation (the "DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Provider agrees to ensure that DBE's as defined in 49 CFR Part 23 and Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Provider shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

27.2 Prompt Payment Requirements. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, therefore, the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Provider agrees to pay each subconsultant under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Provider receives from Authority. Provider agrees further to return any retainage payments to each subconsultant within forty-five (45) days after the subconsultant's work is satisfactorily
completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE subconsultants.

27.3 **Incorporation of Provisions.** Provider shall include the provisions of paragraphs 27.1 through 27.2 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Provider shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Provider may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Provider may request the United States to enter into such litigation to protect the interests of the United States.

**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 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

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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.

29.0 **GENERAL CIVIL RIGHTS CLAUSE**

The Contractor agrees to comply with pertinent statute, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or 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.

30.0 **E-VERIFY**

Provider agrees that it will enroll and participate in the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program. The Provider further agrees to provide the Authority with proof of such enrollment within thirty (30) days of the date of this Agreement. Once enrolled, Provider agrees to use the E-Verify Program to confirm the employment eligibility of:
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 under the Agreement.

Provider further agrees that it will require each contractor or subcontractor performing work or providing services under this Agreement to enroll in and use the U.S. Department of Homeland Security's E-Verify Program for Employment Verification to verify the employment eligibility of all persons employed by the contractor or subcontractor during the term of this Agreement.

Provider agrees to maintain records of its participation and compliance with the provisions of the E-Verify Program, including participation by its contractors and subcontractors as provided above, and to make such records available to the Authority or other authorized state or federal agency consistent with the terms of this Agreement.

Compliance with the terms of this Section is made an express condition of this Agreement, and the Authority may treat failure to comply as a material breach of the Agreement and grounds for immediate termination.

31.0 HEADINGS

The headings of the Articles, Sections, Exhibits, and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits and Attachments.
32.0 NOTICES AND ADDRESS

32.1 All notices required and/or made pursuant to this Agreement to be given by either party to the other shall be in writing and shall be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Attention: Airport Executive Director

Attention: _______________________

32.2 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.

33.0 TERMINATION OR SUSPENSION

33.1 Provider shall be considered in material default of this Agreement and such default will be considered cause for Authority to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under any Task Authorization, or (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 Provider, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. Authority may so
terminate this Agreement, in whole or in part, by giving Provider seven (7) calendar days written notice.

33.2. If, after notice of termination of this Agreement, it is determined for any reason that Provider was not in default, or that its default was excusable, or that Authority was not entitled to the remedies against Provider provided herein, then Provider's remedies against Authority shall be the same as and limited to those afforded Provider under paragraph 31.3. below.

33.3. Authority shall have the right to terminate this Agreement, in whole or in part, without cause upon thirty (30) calendar days written notice to Provider. In the event of such termination for convenience, Provider's recovery against Authority shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Provider that are directly attributable to the termination, but Provider shall not be entitled to any other or further recovery against Authority, including, but not limited to, anticipated fees or profits on work not required to be performed.

33.4. Upon termination, Provider shall deliver to Authority all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement.

33.5. Authority shall have the power to suspend all or any portions of the services to be provided by Provider hereunder upon giving Provider 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, Provider’s sole and exclusive remedy shall be an extension of time to its schedule.

34.0 **TERMINATION UNDER SECTION 287.135, F.S.**

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if Consultant is found to have submitted a false certification under Section 287.135(5), F.S. (2016), 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.

35.0 **WAIVER OF BREACH**

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

36.0 **ENTIRE AGREEMENT**

This Agreement, including the referenced Exhibits and Attachments, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.

37.0 **AMENDMENTS**

The terms and provisions contained in 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) shall take precedence.

38.0 MODIFICATIONS

Modifications to the terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Amendment(s) or Supplemental Task Authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Amendment(s) or Supplemental Task Authorization(s), the latest executed Amendment(s) or Supplemental Task Authorization(s) shall take precedence.

39.0 SEVERABILITY

If any word, phrase, sentence, part, subsection, or other portion of this Agreement, or any application thereof, to any person, or circumstances is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not have been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

40.0 ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties in the space provided.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first written above.
ATTEST: LINDA DOGGETT
Clerk of the Circuit Court

By: __________________________
    Deputy Clerk

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

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

Signed, Sealed and Delivered in the presence of:

____________________________
Witness

____________________________
Witness

SEAL

____________________________
PROVIDER

____________________________
Signature

By: __________________________
    Printed Name

Title

Draft for Discussion Purposes Only
Port Authority Attorney's Office
8/7/2019
EXHIBIT "A"

SCOPE OF SERVICES

Provider must furnish all labor, materials and equipment to clean, filter, polish and remediate fuel tanks in accordance with this Scope of Work.

1. Filtering. Provider will be required to remove free water, moisture, sediment and other contaminants from the fuel through a filter down to ‘1 micron (nominal). Filter size will be determined based on the type of contaminants. The amount of fuel within each tank shall be turned over (or processed) three to five times as necessary to properly filter out contaminants.

2. Cleaning. Provider must use suction and discharge hoses to create a low through the tanks that are being cleaned. During the suction process, the suction wand must be manipulated around the tank in order to reach as much area of the tank as possible.

3. Sampling. Provider must take fuel samples from the center and bottom of the tank when the polishing is complete and send to a third party independent lab for testing. All results and reports must be forwarded to the Authority on the same day of receipt.

3.1. Lab analyses must be provided by a third party that conforms to ASTM D975 and AHCA standards including:

3.1.1 API gravity;
3.1.2 Cetane index;
3.1.3 Corrosion copper strip;
3.1.4 Dissolve water by Karl Fischer titration determination;
3.1.5 Distillation;
3.1.6 90% recovery;
3.1.7 Flash point;
3.1.8 Microbial growth;
3.1.9 Sulfur content by Fluorescence;
3.1.10 Visual appearance; and
3.1.11 Water & sediment.

4. Polishing. Provider must be responsible for polishing tanks to the satisfaction of the Authority.

5. Safety. Provider must follow industry standards ANSI/API and ensure safe operation of all equipment at all times.

Provider must comply with all federal, state and local laws and regulations regarding the safe handling and disposal of petroleum products and/or contaminated waste water.

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Port Authority Attorney’s Office
8/7/2019
6. **Access to Site:** Provider's employees will be permitted unrestricted access to all areas of the site needed to perform scope of work.

7. **Provider** must perform all services in accordance with this scope of work. No changes in scope or pricing that vary from the Provider's bid will be permitted unless authorized in writing by the Authority. All invoices, reports and other written documents prepared by Provider must contain the Purchase Order number and Authority SPCC plan identifier number.
**EXHIBIT “B”**

**COMPENSATION SCHEDULE**

<table>
<thead>
<tr>
<th>SPCC Plan Identifier</th>
<th>Location</th>
<th>Category</th>
<th>Type</th>
<th>Contents</th>
<th>Capacity (gallons)</th>
<th>Construction</th>
<th>Total Price Per Tank</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Vehicle Maintenance</td>
<td>Portable Generator</td>
<td>AST</td>
<td>Diesel</td>
<td>160</td>
<td>Single-walled HDPE</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Grounds Maintenance</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>6,000</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Lift Station</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>1,000</td>
<td>Single-walled steel with concrete outer wall</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>Generator Day Tank</td>
<td>Diesel</td>
<td>85</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>1,000</td>
<td>Single-walled steel with concrete outer wall</td>
<td></td>
</tr>
<tr>
<td>11a</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>Generator Day Tank</td>
<td>Diesel</td>
<td>85</td>
<td>Single-walled steel</td>
<td></td>
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<tr>
<td>12</td>
<td>Concourse B</td>
<td>Fixed Bulk Storage Container</td>
<td>UST³</td>
<td>Diesel</td>
<td>4,000</td>
<td>Double-walled fiberglass</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Concourse B</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Concourse C</td>
<td>Fixed Bulk Storage Container</td>
<td>UST³</td>
<td>Diesel</td>
<td>4,000</td>
<td>Double-walled fiberglass</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Concourse C</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Concourse D</td>
<td>Fixed Bulk Storage Container</td>
<td>UST³</td>
<td>Diesel</td>
<td>4,000</td>
<td>Double-walled fiberglass</td>
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</tr>
<tr>
<td>No.</td>
<td>Location</td>
<td>Type</td>
<td>Material</td>
<td>Size</td>
<td>Description</td>
<td></td>
<td></td>
</tr>
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<td>------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Concourse D</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Parking Garage</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>2,000</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>ARFF</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>4,000</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>ARFF</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>2,000</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>Ramp</td>
<td>Portable Bulk Storage Container</td>
<td>Equip. reservoir for ground power unit</td>
<td>Diesel</td>
<td>70</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Ramp</td>
<td>Portable Bulk Storage Container</td>
<td>Equip. reservoir for ground power unit</td>
<td>Diesel</td>
<td>70</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Vehicle Maintenance</td>
<td>Portable Bulk Storage Container</td>
<td>Equip. reservoir for mobile pump</td>
<td>Diesel</td>
<td>100*</td>
<td>Single-walled steel</td>
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<tr>
<td>45</td>
<td>Vehicle Maintenance</td>
<td>Portable Bulk Storage Container</td>
<td>Equip. reservoir for mobile pump</td>
<td>Diesel</td>
<td>100*</td>
<td>Single-walled steel</td>
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</tr>
<tr>
<td>46</td>
<td>Vehicle Maintenance</td>
<td>Portable Bulk Storage Container</td>
<td>Equip. reservoir for mobile pump</td>
<td>Diesel</td>
<td>100*</td>
<td>Single-walled steel</td>
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</tr>
<tr>
<td>47</td>
<td>Toll Plaza</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>155</td>
<td>Single-walled Steel</td>
<td></td>
</tr>
</tbody>
</table>

*SPCC Plan Identifier is the name of the bulk storage container, mobile/portable bulk storage container areas, or oil-filled equipment and the associated piping.
The numbers of drums and aggregate capacities for drum storage areas are representative of what is typically present and may vary.
*Underground Storage Tanks (USTs) are subject to the United States EPA regulations for USTs and therefore exempt from SPCC regulations.
The pump manufacturer indicated that the storage capacity for this pump type ranges from 70-100 gallons.
EXHIBIT "C"
CERTIFICATE OF INSURANCE

In consideration of the premiums charged on the insurance policies shown in this certificate, this certificate of insurance is issued to the certificate holder shown below. This certificate does not amend, extend or alter the coverage afforded by the policies listed below except as shown below:

Name and Address of Agency

<table>
<thead>
<tr>
<th>COMPANIES AFFORDING COVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPANY LETTER A</td>
</tr>
<tr>
<td>COMPANY LETTER B</td>
</tr>
</tbody>
</table>

Name and Address of Insured

| COMPANY LETTER C |
| COMPANY LETTER D |
| COMPANY LETTER E |

This is to verify that the insurance policies listed below have been issued to the insured and are in force at this time. It is agreed that none of these policies will be cancel or changed, except in the application of the aggregate liability limits provisions, so as to affect the insurance described in this certificate until after 30 days written notice of such cancellation or change has been delivered to the certificate holder at this address shown below. It is also agreed that 30 days written notice by the insurance companies listed above of their intention to renew their policies listed below for the same coverage provided in this certificate will be given to the certificate holder at their address shown above. The policies shown in this certificate are primary to any insurance carried by the certificate holder.

<table>
<thead>
<tr>
<th>Company Letter</th>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Effective Date (mm/dd/yyyy)</th>
<th>Policy Expiration Date (mm/dd/yyyy)</th>
<th>ALL LIMITS IN THOUSANDS</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>GENERAL LIABILITY</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Commercial General Liability</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Claims Made Occurrence</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Owners &amp; Contractors</td>
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<tr>
<td></td>
<td>Protective</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>X.C.U. Coverage</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Broad Form Property Damage</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Independent Contractors</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>AUTOMOBILE LIABILITY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Any Auto</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>All owned Autos</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Scheduled Autos</td>
<td></td>
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<tr>
<td></td>
<td>Hired Autos</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Non-Owned Autos</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>EXCESS LIABILITY</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Umbrella Form</td>
<td></td>
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<tr>
<td></td>
<td>Other than Umbrella Form</td>
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</tr>
<tr>
<td></td>
<td>Claims Made Occurrence</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Each Accident
- Bodily Injury (Each Person) $ |
- Bodily Injury (Each Accident) $ |
- Property Damage $ |
- Bodily Injury and Property Damage Combined $ |

Each Occurrence
- Bodily Injury and Property Damage Combined $ |

Statutory
- (Each Accident) $ |
- (Disease-Policy Limit) $ |
- (Disease-Each Employee) $ |

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Port Authority Attorney's Office
8/7/2019
<table>
<thead>
<tr>
<th>OTHER</th>
</tr>
</thead>
</table>

☐ Contractual Liability Coverage

Description of Contract:

☐ The Certificate Holder has been named as an additional insured as respects the General, Automobile, and Excess Liability Policies described here.

☐ The General, Automobile and Excess Liability Policies described provide the severability of interest (cross liability) provision applicable to the named insured and the Certificate Holder.

☐ Copy of the agent’s license, or other proof of representation, with each insurance company, named above must be attached to this certificate.

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS**

**SPECIFIC PROJECT/LOCATION/VEHICLES/SPECIAL CONDITIONS:**

<table>
<thead>
<tr>
<th>Lee County Port Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>11000 Terminal Access Road</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name and Address of Certificate Holder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Issued:</td>
</tr>
</tbody>
</table>

Draft for Discussion Purposes Only
Port Authority Attorney’s Office
8/7/2019
The Certificate Holder (CH), requires the use of its Certificate of Insurance as evidence that the insurance requirements of the agreement have been complied with and will continue to be complied with as long as the agreement is in force. CH must rely on this certificate as proof of compliance with the insurance requirements agreed upon. The CH must be advised of cancellation or nonrenewal of the insurance coverage required or reduction in the coverage provided in compliance with the agreement as shown in the Certificate of Insurance. Thirty-day written notice of cancellation, nonrenewal, or reduction in coverage must be provided to the CH so that it can take proper action to protect itself.

Many Certificates of Insurance are received by the CH and many contain wording to the effect that the certificate is issued as a matter of information only and confers no rights upon the certificate holder. A common example of this unacceptable language is: should any of the above-described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the named holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

The CH must have the right of notice of cancellation, nonrenewal, and reduction of coverage, as this is part of the insurance requirements of the agreement entered into and to be relied upon by the CH as evidenced through its Certificate of Insurance.

The requirement that the authorized representative signing the Certificate of Insurance attach his agent’s license with the insurance company or companies, or other acknowledgment by the insurance company or companies shown in the certificate, is to show proof to the CH that the person signing the certificate is legally authorized by the insurance company to so obligate them, as referred to in the certificate.

The CH must have positive evidence in the form of its Certificate of Insurance that the insurance requirements of the agreement entered into have been met and will continue to be met, without interruption, during the term of the agreement entered into unless thirty days written notice is given to it.

No activity shall begin until the CH’s properly executed Insurance Certificate is received. Your cooperation in providing the CH with acceptable evidence of insurance requirements compliance, as agreed to in the agreement, will prevent confusion and delay in allowing the subject matter of this agreement to be accomplished.

The acceptance of delivery to the CH of any Certificate of Insurance required in any contract does not constitute agreement by the CH that the insurance requirements in the contract have been met or that the insurance policies shown in the certificate are in compliance with the contract requirements.

SEVERABILITY OF INTERESTS PROVISION

With respect to claims involving any insured at interest hereunder, each such interest shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured. This agreement, however, shall not operate to increase the limits of the Insurance Company’s liability.
LEE COUNTY PORT AUTHORITY

11000 Terminal Access Road
Suite 8671
Fort Myers, Florida 33913

REQUEST FOR BIDS (RFB)

RFB 19-15LD

FOR

FUEL TANK POLISHING
FOR LEE COUNTY PORT AUTHORITY
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

DATED: August 16, 2019

PURCHASING OFFICE
Lori DeLoach, CPPB, Senior Procurement Agent (Designated Contact)

TELEPHONE: (239) 590-4555
FAX NUMBER: (239) 590-4539

SUBMITTALS DUE: Tuesday, September 03, 2019, TIME: 2:00 P.M., LOCAL TIME
PRE-BID MEETING: There is no Pre-Bid Meeting for this Project
Contents
PART A – GENERAL INFORMATION AND CONDITIONS.................................................................3
PART B – SPECIAL INSTRUCTIONS AND REQUIREMENTS .........................................................11
PART C - PROJECT INFORMATION AND REQUIREMENTS .........................................................13
PART D - DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM .............................15
PART E – FORMS Note: These forms must be submitted with the Bidder’s Bid submittal..............16
    FORM 1: BIDDER’S CERTIFICATION ....................................................................................16
    FORM 2: BID FORM .............................................................................................................17
    FORM 3: LOBBYING AFFIDAVIT .......................................................................................20
    FORM 4: PUBLIC ENTITY CRIMES FORM .........................................................................21
    FORM 5: BIDDER’S SCRUTINIZED COMPANIES CERTIFICATION .................................22
    FORM 6: LOCAL PREFERENCE AFFIDAVIT .......................................................................23
    FORM 7: DIRECTIONS for Completion of Professional Reference Form ..............................25
    FORM 7: PROFESSIONAL REFERENCES ........................................................................26
    FORM 8: OPTIONAL FORM ...............................................................................................27
    Sealed Bid Label ................................................................................................................28
    Service Provider Agreement Attached .............................................................................. 29
PART A – GENERAL INFORMATION AND CONDITIONS

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

BID OPENING: Tuesday, September 03, 2019, 2:00 P.M., LOCAL TIME THIRD FLOOR CONFERENCE ROOM, 11000 TERMINAL ACCESS ROAD, SUITE 8671, FORT MYERS, FL 33913-8899

2. DELIVERY OF BIDS
The delivery of the sealed bid to the Lee County Port Authority prior to the deadline is solely and strictly the responsibility of the Bidder. The deadline for delivery of all bids is 2:00 p.m., local time, Tuesday, September 03, 2019

One (1) original and one (1) identical electronic copy of bid in PDF format as a single file on a USB flash/ travelers drive must be delivered to the address indicated below. In case of discrepancy in content between the original hard copy and the USB flash drive, the original hard copy will govern. All bids must be sealed and marked as RFB 19-15LD, Fuel Tank Polishing for Lee County Port Authority at Southwest Florida International Airport. All bids must be delivered to:

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

Electronically submitted or faxed bids will not be considered.

Bidders are advised that the United States Postal Service and even Express Mail Services may not deliver your bid in a timely manner. Bidders are cautioned to plan necessary delivery time accordingly.

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

Any bid received after the deadline for submittal of bids will not be considered.
4. INQUIRIES/CLARIFICATION
Except during a scheduled prebid meeting, the Authority will not respond to oral inquiries concerning this RFB. Bidders may submit written email inquiries, or submit written inquiries by U.S. mail, regarding this RFB to the designated Purchasing Office contact indicated on the cover page via email: LKDeLoach@FLCPA.com. The Authority may choose not to respond to written or faxed or email inquiries received after 2:00 pm, local time, Monday, August 25, 2019.

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

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

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

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

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

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

9. GENERAL CIVIL RIGHTS CLAUSE
The successful Bidder agrees to comply with pertinent statues, Executive Orders and such rules as are promulgated to ensure that no person shall, on the ground 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 though the completion of any resulting contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

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

Form 1  Bidder's Certification
Form 2  Official Bid Form
Form 3  Lobbying Affidavit
Form 4  Public Entity Crimes Form
Form 5  Scrutinized Companies Certification
Form 6  Local Vendor Preference Affidavit
Form 7  Professional References
Form 8  Optional Form – No Bid Submission

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

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

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

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

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

13. TERMINATION FOR CONVENIENCE
The Authority may cancel any agreement resulting from this RFB at its discretion upon giving thirty (30) calendar days written notice to the successful Bidder. In addition, the Authority reserves the right during the term of the agreement to terminate the agreement with any single successful Bidder and award the agreement to the next ranking Bidder if deemed to be in the Authority’s best interest.

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

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

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

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

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

17. RESERVATION OF RIGHTS
The Authority reserves the right to reject any and/or all bids, accept or reject any alternates, waive irregularities and technicalities if in the Authority’s sole judgement, is in the best interest of the Authority and conforms to applicable state and local laws or regulations.

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

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

- Failure to submit Bidder’s certification with bid submittal
- Lobbying the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Authority Request for Bids
- Collusion with the intent to defraud or other illegal practices upon the part of any firm submitting a bid
- Being on the Convicted Vendors List
• Being on any Scrutinized Companies List or otherwise ineligible to submit a bid to provide services under Section 287.135, Florida Statutes

• Not being properly licensed by the State of Florida or Lee County prior to submitting a bid

• Not being registered to do business in the State of Florida prior to submitting a bid

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

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

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

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

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

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

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

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

Details regarding the bid protest policy are contained within the Lee County Port Authority Purchasing Manual, which is available for inspection and/or copying at the Lee County Port Authority Purchasing Office, 11000 Terminal Access Road, Suite 8671, 3rd Floor, Fort Myers, Florida, 33913, telephone (239) 590-4555.

Failure to follow the bid protest procedure requirements within the time frames prescribed herein as established by Lee County Port Authority shall constitute a waiver of your protest and resulting claims.

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

23. PAYMENT
The accepted bid price for the scope of work to be provided will be paid to the successful Bidder after completion and acceptance of the work and upon receipt of the successful Bidder's invoice. All invoices, to include purchase order number, shall be submitted to Lee County Finance Department, PO Box 2463, Fort Myers, Florida, 33902.

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

25. 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.

26. ESTIMATED QUANTITIES
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. All items listed for purchase are on an "as-needed" and/or "as funds permit" basis and the Authority may order all, or none, of the items or services described.
27. NONEXCLUSIVITY OF AGREEMENT
The successful Bidder understands and agrees that any resulting contractual relationship is nonexclusive and the Lee County Port Authority reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the Lee County Port Authority.

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

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

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

a. Bids showing omissions, alterations of form, additions not specified, or required conditional or unauthorized alternate bids.

b. Bids quoting prices that substantially deviate, either higher or lower, from those included in the bids of competing Bidders for the same line item unit costs.

c. Bids where 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.

31. BID EVALUATION
Upon evaluation of all bids received, a Notice of Intent to Award may be made to the lowest responsible Bidder(s) whose bid(s) is responsive to the Request for Bids and whose qualifications indicate that the award will be in the best interest of the Authority, in the Authority’s sole judgment.

The Authority reserves the right to award to one or multiple bidders based upon lowest price, in which case the status of ‘Primary’ and ‘Secondary’ will be assigned, as appropriate. When a Primary/Secondary award is made, the Primary will be the Authority’s first contact for the assignment of any work required under the Service Provider Agreement. If the Primary is unable
to fulfill the Authority’s need or meet the Authority’s timeline, the Secondary is the next order of contact. Additionally, the selection order may be changed at any time during the term of the Service Provider Agreement as a result of deficient or non-compliant performance.

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

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

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

32. EXECUTION OF THE CONTRACT
The successful Bidder(s) shall execute and return the Service Provider Agreement within ten (10) calendar days from issuance of the notice of intent to award the bid. The **successful Bidder will be required to execute the Service Provider Agreement in substantially the form attached, unless amended during the bid process and prior to the opening of bids**. Failure of the successful Bidder to execute the service provider agreement or contract 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.

Upon receipt of the agreement executed by the successful Bidder, the Authority shall complete the execution of the awarded agreement in accordance with local laws or ordinances, and return one fully executed original agreement, along with the bid bond, to the Bidder. Delivery of the fully executed awarded agreement to the Bidder shall constitute the Authority’s approval to be bound by the successful Bidder's bid and the terms of the contract.

[END of PART A.]
PART B – SPECIAL INSTRUCTIONS AND REQUIREMENTS

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

1. **HOLD HARMLESS AND INDEMNIFICATION:** Bidder agrees through submission of its bid, to indemnify, hold harmless and defend Authority and Lee County, Florida and their respective commissioners, officers, agents, and anyone directly or indirectly employed by either of them, from and against any and all claims, injuries, liabilities, damages, demands, losses, costs or actions, either at law or in equity, including, but not limited to court costs and reasonable attorney’s fees, that may be made or brought at any time in the future by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, due to any negligence, wrongful conduct, or intentional act or omission, or based on any act of fraud or defalcation of the Bidder and persons employed or utilized by the Bidder in the performance of any contract awarded under this Request for Bids.

2. **AIR OPERATIONS AREA (AOA) SECURITY MAINTENANCE:** Authority will provide temporary badges for the successful Bidder’s employees with a valid driver’s license as identification.

3. **TERM:** The initial term of the agreement will be for a one (1) year term with an option reserved to the Authority to extend the term of the agreement for three (3) additional one-year renewal periods. The pricing shall be firm and fixed for the initial term of the contract. To exercise its option to renew, the Authority shall notify the successful bidder in writing at least thirty (30) days in advance of the expiration date of the initial term or any extension term. Extension of the Agreement for the renewal periods will be upon the same pricing, terms and conditions.

4. **METHOD OF AWARD:** The award of this Request for Bids shall be made to the lowest, responsive and responsible Bidder. To be responsive, the Bidder shall meet all requirements of this Request for Bids. The low bid will be based on the overall lowest total base bid. Equivalent items will be considered and may be approved by the Port Authority, provided descriptive literature and specifications accompany the bid. Acceptability of equivalent items is determined at the sole discretion of the Authority.

5. **PURCHASE ORDER:**

   Purchase orders will be issued on an as needed basis for actual services required. Actual orders for polishing of the fuel tanks listed on the Bid Form are neither guaranteed nor implied. All orders are on "as needed" and "as funds permit" basis. The Authority may order all, some, or none of the units to be polished.

6. **INSURANCE**

   All Bidders should furnish proof of acceptable insurance. A copy of the Bidder’s current insurance certificate or a statement from the Bidder’s insurance company verifying the firm’s ability to obtain the insurance coverage as stated herein, should be submitted with the bid.

   Each Bidder shall provide evidence of its ability to furnish the following minimum insurance coverage, either under existing policies or by virtue of a specific project policy, and with deductible limits that are acceptable to the Authority:
Automobile Liability $5,000,000;
Commercial General Liability Per occurrence, $2,000,000, Aggregate, $4,000,000;
Pollution Liability $2,000,000;
Work performed Airside will require a minimum of $5,000,000 in liability coverage, and;
Workers' Compensation in accordance with Florida statutory requirements.

The insurance provided will include coverage for all parties employed by the Bidder. At the discretion of the Authority, all insurance limits may be reevaluated at any time during the term of the agreement.

An insurance certificate on an approved form is required from the successful Bidder in the amounts stated above. The form must be properly executed and submitted by the insurance company and successful Bidder within ten (10) days after notification of the Lee County Port Authority's intent to award the agreement. The appointed insurance agent or carrier shall be duly licensed to provide coverage and honor claims within Florida. The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory; a waiver of subrogation in favor of the Authority will also be required. The Lee County Port Authority shall be named as an additional insured on the policy.

The certificate holder shall be Lee County Port Authority, Attn: Risk Manager (riskmanagement@flylcpa.com), 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913.

[END OF PART B.]
PART C - PROJECT INFORMATION AND REQUIREMENTS

RFB 19-15LD
FUEL TANK POLISHING FOR THE LEE COUNTY PORT AUTHORITY
AT SOUTHWEST REGIONAL INTERNATIONAL AIRPORT

SCOPE OF WORK

Lee County Port Authority requires the services of a qualified vendor to provide all labor, materials and equipment to clean, filter, polish and remediate fuel tanks in accordance with the Scope of Work.

1. **Filtering.** The successful Bidder will be required to remove free water, moisture, sediment and other contaminants from the fuel through a filter down to 1 micron (nominal). Filter size will be determined based on the type of contaminants. The amount of fuel within each tank shall be turned over (or processed) three to five times as necessary to properly filter out contaminants.

2. **Cleaning.** The successful Bidder shall use suction and discharge hoses to create a flow through the tanks that are being cleaned. During the suction process, the suction wand must be manipulated around the tank in order to reach as much area of the tank as possible.

3. **Sampling.** The successful Bidder will take fuel samples from the center and bottom of the tank when the polishing is complete and send to a third party independent lab for testing. All results and reports must be forwarded to the Authority on the same day of receipt.

3.1. Lab analyses must be provided by a third party that conforms to ASTM D975 and AHCA standards including:
3.1.1. API gravity,
3.1.2. Cetane index,
3.1.3. Corrosion copper strip,
3.1.4. Dissolved water by Karl Fischer titration determination,
3.1.5. Distillation,
3.1.6. 90% recovery,
3.1.7. Flash point,
3.1.8. Microbial growth,
3.1.9. Sulfur content by Fluorescence,
3.1.10. Visual appearance, and
3.1.11. Water & sediment.

4. **Polishing.** The successful Bidder must be responsible for polishing tanks to the satisfaction of the Authority.

5. **Safety.** The successful Bidder vendor must follow industry standards ANSI/API and ensure safe operation of all equipment at all times.
The selected vendor must comply with federal, state and local laws and regulations regarding the safe handling and disposal of petroleum products and/or contaminated waste water.

6. **Access to Site**: The selected Vendor’s employees will be permitted unrestricted access to all areas of the site needed to perform scope of work.

7. The successful Bidder is required to perform services in accordance with this scope of work. No changes in scope or in pricing that vary from the vendor’s accepted bid will be permitted unless authorized in writing by the Authority. All invoices, reports, and other written documents made must contain the purchase order and Authority SPCC plan identifier number.

**[END OF SECTION C.]**
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**Questions for consideration:**

- All proposals will be presented for bidding purposes only. Final agreement will be based on selected services, not on the lowest of all proposals.
- The Authority will only accept bids submitted on non-returnable forms provided by the Authority. This submission of other forms other than those provided by the Authority may be deemed non-responsive and ineligible for award.
- All proposals will be evaluated in the context of the Authority's needs, with the lowest cost on a truck per capita basis.
- The Authority reserves the right to alter the specifications as needed and will notify all bidders accordingly.

**Solicitation:**

- RFP 19-001 Diesel Tank Polishing

**Company Name:** Lee County Port Authority

**Purchasing Office:**

**Bid Form:**

Page 1 of 3
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Equipment Reserve for | Diesel  |       |          | Vehicle Maintenance |
| 490     | $ 100                                       | Diesel   | Equipment Reserve for  
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| 1500    | $ 2000                                      | Diesel   | AST          | AST     |      |          | Parking Carport |
| 1500    | $ 2000                                      | Diesel   | AST          | AST     |      |          | Parking Carport |
| 1500    | $ 2000                                      | Diesel   | AST          | AST     |      |          | Parking Carport |
| 1500    | $ 2000                                      | Diesel   | AST          | AST     |      |          | Parking Carport |
| 1500    | $ 2000                                      | Diesel   | AST          | AST     |      |          | Parking Carport |
| 1500    | $ 2000                                      | Diesel   | AST          | AST     |      |          | Parking Carport |
| 1500    | $ 2000                                      | Diesel   | AST          | AST     |      |          | Parking Carport |
| 1500    | $ 2000                                      | Diesel   | AST          | AST     |      |          | Parking Carport |
| 1500    | $ 2000                                      | Diesel   | AST          | AST     |      |          | Parking Carport |
| 1500    | $ 2000                                      | Diesel   | AST          | AST     |      |          | Parking Carpoint |
The pump manufacturer indicates that the storage capacity for the pump type ranges from 70-100 gallons.

Underground Storage Tanks (USTs) are subject to the United States EPA regulations for USTs and therefore exempt from SPCC regulations.

The numbers of drums and aggregate capacities for drum storage areas are representative of what is physically present and may vary.

SPEC Plan Identifier is the name of the bulk storage container, mobile/portable bulk storage container areas, or oil-filled equipment and the associated pipeline.

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<th>TOTAL BASE BID</th>
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<tr>
<th>Service</th>
<th>Total Price Per Tank Per (Gallons)</th>
<th>Capacity</th>
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<td>$17,520</td>
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<th>Type</th>
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<tr>
<th>Toll Plaza</th>
<th>Vehicle Maintenance</th>
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<th>EQ General Reserve for Station Power Unit</th>
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<th>JPE</th>
<th>Consumer</th>
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<tr>
<th>PRE # 11-13</th>
<th>Field Test Plan</th>
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PART D - DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

Not applicable to this solicitation.

[END OF PART D]
PART E – FORMS Note: These forms must be submitted with the Bidder’s Bid submittal.

FORM 1: BIDDER’S CERTIFICATION

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

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

Addendum # A | Date: 01/27/19
Addendum #  | Date:
Addendum #  | Date:
Addendum #  | Date:

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

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

I further certify, under oath, that this bid is made without prior understanding, agreement, connection, discussion, or collusion with any 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.

BOO FUEL GUY dba TANK KLEEN
NAME OF BUSINESS

JONATHAN YOUNG – PRESIDENT
AUTHORIZED SIGNATURE

NAME, TITLE, TYPED
JOSEPH YOUNG
81-1762387
FEDERAL IDENTIFICATION #

MAILING ADDRESS
P.O. BOX 219
TARON SPRINGS, FL 34688
CITY, STATE & ZIP CODE

TELEPHONE NUMBER/FAX NUMBER
TANK KLEEN LLC @ GMAIL.COM
EMAIL ADDRESS

State of: FLORIDA
County of: PINELLAS
This foregoing instrument was acknowledged before me this
AUGUST 20, 2019, by JOSEPH YOUNG, who is personally known to
me or produced as identification.

Signature of Notary

CANDACE LEAH NIMMO
Notary Public- State of Florida
Commission # GG 300901
My Commission Expires February 12, 2023

Page 16 of 29
FORM 3: LOBBYING AFFIDAVIT

STATE OF: FLORIDA
COUNTY OF: PINELLS

JOSEPH B. YOUNG

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 GODFUELGUY dba TANK KLEEN (Bidder), maker of the attached bid and that neither the Bidder nor its agents have lobbied to obtain an award of the Agreement required by this Bid from the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Authority Bids. The prospective Bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. 1352 and 49 CFR Part 20 and the Lee County Lobbying Ordinance, No. 03-14.

APPLICANT

The foregoing instrument was acknowledged before me on 8/30/19,
by JOSEPH YOUNG (name of person, officer or agent, title of officer or agent), of TANK KLEEN (corporation or partnership, if applicable), a FLORIDA (State of incorporation or partnership, if applicable), on behalf of the known to me or has produced DRIVER LICENSE as identification.

Signature of person taking acknowledgment

Name typed, printed, or stamped

PRESIDENT

(Title or rank)

Signature of Notary (Serial or Commission No.)

NOTE: THIS FORM IS REQUIRED FROM ALL BIDDERS
FORM 4: PUBLIC ENTITY CRIMES FORM

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

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

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

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

BIDDER'S NAME:  [Handwritten: 1800FUELGUY  3/14  TANK KLEEN]
FORM 5: BIDDER'S SCRUTINIZED COMPANIES CERTIFICATION

BIDDER'S CERTIFICATION

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

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

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

[Signature]

Notary Public
State of Florida
County of Collier

Sworn to and subscribed before me this 29th day of August, 2019, by Joseph B. Young who produced the following as identification

FL driver license (Type of identification) or is personally known to me. My Commission Expires 09/18/2023.

[Signature of Notary Public]

Page 22 of 29
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 ________

________________________________________________________________________

Current Lee County location of equipment, materials and personnel that will be used full time on this project:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________ (in Lee County, Florida)

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

Please identify the firm name and physical address below:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

☐ Not a Local Vendor as defined by Lee County Ordinance 00-10, as amended by Lee County Ordinance Nos. 08-26 and 17-16.
FORM 6: LOCAL PREFERENCE AFFIDAVIT (Continued)

Printed Name

Title

Signature

Notary Public — State of Florida
County of Collier
Sworn to and subscribed before me this 21st day of August, 2019
Personally known or produced identification

My Commission Expires 09/12/2023
(Type of identification)

Printed, typed or stamped commission name of Notary Public
FORM 7: DIRECTIONS for Completion of Professional Reference Form

Bidders are required to provide this reference request form to a minimum of three clients with whom they have recently completed a similar project. **DO NOT** use current Lee County Port Authority employees as references.

References **ARE NOT** to be submitted with Bidder’s Request for Bid package; the client providing the reference will return this form via email directly to the Purchasing Agent listed on the form.

It is the Bidder’s responsibility to confirm directly with the client that their required forms have been submitted. **DO NOT** contact the Authority directly to request if references have been submitted.

1) **Bidder to complete:** *(prior to sending to reference respondent)*
   a) Section 1 – Reference Respondent/client information;
   b) Section 2 – Bidder’s Name and client Project Name

2) Reference respondent (Bidder’s client) to complete Section 3; complete professional reference form, additional pages may be used if needed and submit form **DIRECTLY** to Lee County Port Authority Purchasing Agent’s email listed on form. **References should not be returned by the vendor.**

   A minimum of three (3) reference responses are required.

Failure to have references submitted directly to Lee County Port Authority Purchasing Agent’s email, on or before the due date noted on the Professional Reference form, may cause your firm to be considered nonresponsive.
FORM 8: OPTIONAL FORM

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

NO BID SUBMISSION
RFB 19-15LD Fuel Tank Polishing

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

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

________________________ Services are not available through our company

________________________ Our services do not meet the Scope of Services

Circle one - Scope of Services were:

<table>
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<tr>
<th>not applicable</th>
<th>too rigid</th>
<th>too vague</th>
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<tbody>
<tr>
<td>not clearly understood</td>
<td>Insufficient time allowed for preparation</td>
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</table>

________________________ Other reason(s):

How did you learn about this solicitation?

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

Name of Firm:

Name of Individual:

Telephone Number: Fax:

Email Address:

DATE: ____________________________________________
Service Provider Agreement Attached
LEE COUNTY PORT AUTHORITY

SERVICE PROVIDER AGREEMENT

FUEL TANK POLISHING FOR LEE COUNTY PORT AUTHORITY AT

SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

RFB 19-15LD

THIS AGREEMENT is entered this 29th day of November, 2019, between the LEE COUNTY PORT AUTHORITY, a political subdivision and special district of the State of Florida ("AUTHORITY"), at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and [ Ginsbergfections, a FLORIDA corporation, authorized to do business in the State of Florida, ("PROVIDER"), at [___________], Federal Identification Number [81-1762387].

WITNESSETH

WHEREAS, the Authority desires to obtain fuel tank polishing services from Provider as described below for the Southwest Florida International Airport in Fort Myers, Florida; and,

WHEREAS, the Provider certifies that it has been granted and possesses valid, current licenses to do business in the State of Florida and in Lee County, Florida, issued by any applicable State Boards or Government Agencies responsible for regulating and licensing the services to be provided by the Provider under this Agreement; and,

Draft for Discussion Purposes Only
Port Authority Attorney’s Office
8/7/2019
WHEREAS, Provider has reviewed the services required under this Agreement and has submitted a Bid to provide the requested services, and states that it is qualified, willing and able to provide and perform all such services and provide any goods required according to the provisions, conditions and terms below, and in accord with all governing federal, state and local laws and regulations; and,

WHEREAS, the Provider has been selected to provide the services described below as the result of a competitive selection process by Authority that complies with any applicable Florida Statues and the Authority’s Purchasing Policy, as approved and put into effect by the Authority’s Board of Port Commissioners.

NOW, THEREFORE, in consideration of the foregoing and the terms and provisions as contained herein, and the mutual consideration described below, the parties agree as follows:

1.0 RECITALS

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

2.0 DEFINITIONS

2.1 AUTHORITY shall mean the Lee County Port Authority and its governing Board of Port Authority Commissioners.

2.2 PROVIDER shall mean the individual, firm or entity offering services that it shall be legally obligated, responsible, and liable for providing and performing and any and all of the services, work and materials, including services and/or the work of sub-contractors, required under this Agreement.

Draft for Discussion Purposes Only
Port Authority Attorney’s Office
8/7/2019
2.3 BASIC SERVICES shall mean all services, work, materials and all related administrative activities that are necessary to perform and complete the services required by the Scope of Services of this Agreement.

2.4 ADDITIONAL SERVICES shall mean any additional services that the Authority may request from Provider and authorize, in writing, which are not included in the Scope of Services.

2.5 SUPPLEMENTAL AGREEMENT shall mean a written document executed by both parties to this Agreement setting forth such changes to the Scope of Services as may be requested and authorized in writing by the Authority.

3.0 SCOPE OF SERVICES

Provider hereby agrees to perform the services set forth in Exhibit "A", entitled "Scope of Services", which is attached hereto and made a part of this Agreement.

Authority will authorize all Basic Services under this Agreement by issuing a purchase order detailing the services to be performed and the schedule for performing those services. Compensation for services will be paid in accord with Section 8.0 below, and the compensation schedule set forth in Exhibit "B", which is attached and made a part of this Agreement.

4.0 REQUEST FOR BIDS AND PROVIDER'S BID - INCORPORATION BY REFERENCE

The terms of the Request for Bids, and Provider's Bid received in response, 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 this Agreement and the
Request for Bids; or between this Agreement and Provider's Bid; 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 those representations and this information has resulted in the selection of Provider to provide goods or perform services under this Agreement.

5.0 TERM

The term of this Agreement shall be for one (1) year commencing on the date first written above. The Authority will have the option to extend the term of this Agreement for up to three (3) additional years, in increments of one (1) year each from the expiration date of the initial term, and any extended term, on the same terms and conditions, including pricing, as the initial term. Any such extension shall be executed with the same formality as the original Agreement. If Authority decides to exercise the option to extend the term of the Agreement, it will notify the Provider no later than thirty (30) days before the expiration date of the initial term or any extended term.

6.0 OBLIGATIONS OF THE PROVIDER

The obligations of the Provider with respect to all the Basic Services and any Additional Services authorized under this Agreement shall include, but are not limited to the following:

6.1 LICENSES

The Provider agrees to obtain and maintain throughout the term of this Agreement, all such licenses as are required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, licenses required by any applicable State
Boards or other governmental agencies responsible for regulating and licensing the services provided and performed by the Provider under this Agreement.

6.2 PERSONNEL

(1) **Qualified Personnel** - The Provider agrees that when the services to be provided and performed relate to (a) professional service(s) which, under Florida Statutes, require 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 services to be provided under this Agreement. Services performed under this Agreement shall be performed by Provider's own staff, unless agreed in advance by the Authority.

(2) **Project Manager** - Provider agrees to employ and designate a qualified, licensed professional to serve as Provider's project manager ("Project Manager") for this Agreement. Provider shall designate its Project Manager in writing within five (5) calendar days after receiving an executed original of this Agreement. Provider's Project Manager designation shall be executed by the proper officers of Provider, and shall acknowledge that the Project Manager shall have full authority to bind and obligate Provider on all matters arising out of or relating to this Agreement. The Project Manager shall be specifically authorized and responsible to act on behalf of Provider with respect to directing, coordinating and administering all aspects
of the services provided under this Agreement. Provider agrees that the Project Manager shall devote whatever time is required to satisfactorily manage all services provided by Provider under this Agreement. Provider 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.

Provider further agrees to promptly remove and replace the Project Manager, or any other personnel employed or retained by Provider, or any subcontractor or any personnel of any such subcontractor engaged by Provider 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.

6.3 STANDARDS OF SERVICE

The Provider agrees to provide and perform all services under this Agreement in accordance with 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 to be provided and/or performed by the Provider.

6.4 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

(1) Responsibility to Correct - The Provider agrees to be responsible for the quality, technical adequacy and accuracy, timely completion, and the coordination of all services, work and materials performed,
provided, and/or furnished by Provider. The Provider shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Provider or any persons employed by Provider or performing services at Provider’s direction under this Agreement.

(2) **Authority’s Approval Shall Not Relieve Provider of Responsibility** - Neither review, approval, nor acceptance by Authority of any services, work or materials furnished hereunder by the Provider, shall in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials. Neither the Authority’s review, approval or acceptance of, nor payment for, any part of the Provider’s services, work and materials shall 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.

6.5 **ADDITIONAL SERVICES**

If Authority requests the Provider to provide and perform services under this Agreement that are not set forth in Exhibit "A", the Provider agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the services covered under this Agreement and shall be provided and performed in accordance with
the covenants, terms and provisions as set forth in this Agreement and any Amendment(s) to this Agreement.

Additional services shall be administered and executed as Supplemental Task Authorizations under the Agreement. The Provider shall not provide or perform, nor shall the Authority incur or accept any obligation to compensate the Provider for any additional services, unless a written Supplemental Task Authorization has been executed by the parties.

Each Supplemental Task Authorization shall set forth a description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing the additional services.

7.0 AUTHORITY'S RESPONSIBILITIES

Authority shall:

7.1 Designate in writing a project manager to act as Authority's representative with respect to the issuance of Task Authorizations for services rendered under this Agreement ("Project Manager"). The Project Manager shall have exclusive authority to execute Task Authorizations, and any modifications or changes to Provider's (1) scope of services; (2) time of commencement or delivery; or (3) compensation related to services required under any Task Authorization. The Project Manager shall have authority to transmit instructions, receive information, and to interpret and define Authority's policies and decisions with respect to Provider's services under this Agreement. The Project Manager shall review and make appropriate recommendations on all requests submitted by Provider for payment for services.
7.2 The Project Manager is not authorized to, and shall not, issue any verbal orders or instructions to Provider 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 Provider hereunder; (2) the time Provider is obligated to commence and complete all such services; or (3) the compensation Authority is obligated or committed to pay Provider.

7.3 Provide all criteria and information requested by Provider 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.

7.4 Upon request from Provider, make available to Provider all available information in Authority's possession pertinent to any Task Authorization, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data concerning design or construction of a project.

7.5 Arrange access, in accord with Authority's security regulations, for Provider to enter any project site to perform services. Provider acknowledges that Authority may provide such access during times that are not the Provider's normal business hours.

7.6 Notify Provider of any defects or deficiencies in services rendered by Provider.
8.0 COMPENSATION AND METHOD OF PAYMENT

8.1 BASIC SERVICES

Authority will pay Provider for all requested and authorized basic services completed in accordance with the requirements, provisions, and/or terms of this Agreement based on the compensation schedule in Exhibit "B."

8.2 ADDITIONAL SERVICES

The Authority shall pay the Provider for all additional services, that have been requested and authorized by the Authority and agreed to in writing by both parties to this Agreement, and are completed according to the terms of compensation and payment of said additional services based on the compensation schedule set forth in Exhibit "B."

8.3 METHOD OF PAYMENT

(1) LUMP SUM

Upon Authority's acceptance of Provider's work on any Task, Authority will pay Provider a lump sum as specified in Exhibit "B". Lump Sum Fees are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Provider as may be required and/or necessary to complete

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Port Authority Attorney’s Office
8/7/2019
each and every task set forth in the Scope of Services and assigned by purchase order.

(2) MONTHLY STATEMENTS

If agreed by the parties, the Provider may submit not more than one invoice to the Authority for each calendar month. The monthly invoice shall cover services rendered and completed during the preceding calendar month. The Provider shall submit its invoices to the Authority's Finance Department. The Provider's invoice(s) shall be itemized to correspond to the basis of compensation as set forth in this Agreement, or any Amendment or Supplemental Agreement. Invoices shall include an itemized description of the project, the amount of time expended, and a description of the goods and services provided. Failure by the Provider to follow these instructions shall result in an unavoidable delay of payment by the Authority.

(3) PAYMENT SCHEDULE

The Authority shall issue payment to the Provider within forty-five (45) calendar days after 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 shall notify the Provider of such objection or exception within forty-five (45) days of receipt of the invoice. If such
objection or exception remains unresolved at the end of the forty-five (45) day period, the Authority shall withhold the disputed amount and make payment to the Provider of all amounts not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties to this Agreement.

8.4 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE AUTHORITY

In the event of termination of this Agreement for the convenience of the Authority, the Authority shall compensate the Provider for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the Provider in effecting the termination of services and work, and incurred by the submittal to the Authority of any project documents.

8.5 PAYMENT WHEN SERVICES ARE SUSPENDED

If the Authority suspends the Provider’s services or work on all or part of the services required by this Agreement, the Authority shall compensate the Provider 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 such suspension.

8.6 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE IN SCOPE OF SERVICES

If the services required under this Agreement are terminated, canceled, or decreased due to: (1) termination; (2) suspension in whole or in part; and (3) and/or are modified by the subsequent issuance of Amendment(s) and/or Supplemental
Agreement(s); the Provider shall not be entitled to receive compensation for anticipated fees; profit, general and administrative overhead expenses or any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, canceled or decreased.

9.0 PROJECT SCHEDULE

9.1. Provider shall commence work under this Agreement following the date of execution of this Agreement, as shown on the date first written above and upon issuance of Authority’s purchase order describing the work to be performed.

9.2. If Provider is obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of Provider, and not due to its own fault or neglect, including but not restricted to: Acts of God or of public enemies, acts of government or of Authority, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then Provider shall notify Authority in writing within seventy-two (72) hours after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Provider may have had to request a time extension.

9.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of Provider’s services from any cause whatsoever, including those for which Authority may be responsible in whole or in part, shall relieve Provider of its duty to perform services or give rise to any right to damages or additional compensation from Authority. Provider’s sole remedy against Authority will be the right
to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

10.0 INDEMNIFICATION

Provider shall indemnify, hold harmless and defend Authority and Lee County, Florida, and their respective commissioners, officers, agents, and anyone employed directly or indirectly by either of them, from and against all claims, injuries, liabilities, damages, demands, losses, costs or actions, either at law or in equity, including, but not limited to, court costs and reasonable 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, wrongful conduct or intentional act or omission or based on any action of fraud or defalcation of Provider, or other persons employed or utilized by Provider in the performance of this Agreement.

If this indemnity provision is deemed void under Florida law, then the Provider shall indemnify and hold harmless Lee County, the 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 liabilities, damages, losses or costs including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Provider or persons employed or utilized by the Provider in the performance of the services under this Agreement.
11.0 FAILURE TO PERFORM

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

12.0 PUBLIC RECORDS

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

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

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

(2) Building Plans - Provider further acknowledges that Section 119.07(3)(b)1., Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams depicting internal layouts and structural elements of a public building from the disclosure requirements of the Florida Public Records Law.
(3) **Airport Security Systems** - Section 281.301, Florida Statutes, exempts information relating to the security systems for any property owned by or leased to the Authority and any information relating to the security systems for any privately-owned or leased property which is in Authority's possession, including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information, is confidential and exempt from disclosure.

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

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

**13.0 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 agent, employee, subcontractor, or invitee of the Provider, Provider shall notify the Airport's Police Department that the 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
agent, employee, subcontractor, or invitee of the Provider, Provider shall surrender any
Airport Security Identification Badge held by the Provider or by Provider's agents,
employees, subcontractors, or invitees. Should Provider fail to surrender these items
within five (5) days, the Provider shall be assessed a fee of Twenty-Five Dollars ($25.00)
per identification badge not returned. This fee will be billed to the Provider or deducted
from any money owing to the Provider, at the Authority's discretion.

14.0 ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Provider shall not assign or transfer any of its rights, benefits or obligations
hereunder, without the prior written consent of Authority. The Provider shall have the
right, subject to the Authority's prior written approval, to employ other persons and/or firms
to serve as subcontractors to Provider in connection with the Provider's performance of
services and work under the requirements of this Agreement.

15.0 PROVIDER AN INDEPENDENT CONTRACTOR

The Provider is an independent contractor and is not an employee or agent of the
Authority. Nothing in this Agreement shall be interpreted to establish any relationship
other than that of an independent contractor between the Authority and Provider, its
employees, agents, subcontractors or assigns, during or after the performance of this
Agreement.

16.0 F.A.A. NON-DISCRIMINATION CLAUSE

The Provider, for itself, its successors in interest, and assigns, as part of the
consideration hereof, agrees that it shall not discriminate on the basis of race, color,
national origin, or sex in the award and performance of any DOT-assisted contract or in
the administration of its D.B.E. program or the requirements of 49 CFR Part 26.

17.0 **F.A.A. DISADVANTAGED BUSINESS ENTERPRISE (D.B.E. CLAUSE)**

The Provider or subcontractor shall not discriminate on the basis of race, color,
national origin or sex in the performance of this contract. The Provider shall carry out
applicable requirements of 49 CFR Part 23 and Part 26 in the award and administration
of DOT-assisted contracts. Failure by the Provider 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 Port Authority deems appropriate.

18.0 **INSURANCE**

During the term of this Agreement, Provider shall provide, pay for, and maintain,
with companies satisfactory to Authority, the types of insurance described herein.
Provider further agrees to provide Authority’s Risk Manager with advance written notice
of the cancellation or non-renewal of any required insurance coverage and to obtain
replacement coverage as soon as possible. All insurance shall be from responsible
companies duly authorized to do business in the State of Florida and/or responsible risk
retention group insurance companies registered with the State of Florida. Promptly after
execution of this Agreement by both parties, the Provider must obtain insurance
coverages and limits required as set out below and evidenced by properly executed
Certificates of Insurance on forms which are acceptable to the Authority’s Risk Manager.
The Certificates must be signed by an Authorized Representative of the insurance
company/companies shown on the Certificates with proof that he or she is an authorized
representative thereof. In addition, copies of all insurance policies shall be provided to Authority, on a timely basis, if requested by Authority.

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 with 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 Provider from potential insurer insolvency.

All policies of insurance shall contain provisions that advance written notice shall be given to Authority of any cancellation, intent not to renew, material change or alteration, or reduction in the policies' coverages, except in the application of the Aggregate Limits provision of any policy. In the event of a reduction in the Aggregate Limit of any policy, Provider shall immediately take steps to have the Aggregate Limit reinstated to the full extent permitted under such policy. All of Provider's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include waiver of subrogation in favor of Authority.

The acceptance by Authority of any Certificate of Insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the requirements of this Agreement.
All of Provider's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include a waiver of subrogation in favor of Authority.

No work shall commence on any Task assigned under this Agreement unless and until the required Certificates of Insurance are received and approved by Authority.

18.1. INSURANCE REQUIRED

Before starting and until acceptance of any work by Authority, Provider shall procure and maintain insurance of the types and to the limits specified in paragraphs 18.2.1 through 18.2.5, inclusive below. All liability insurance policies obtained by Provider to meet the requirements of this Agreement, other than Worker’s Compensation and Employer’s Liability policies, shall name Authority as an additional insured as to the services of Provider under this Agreement and shall contain the severability of interests provisions.

18.2. COVERAGES

The amounts and types of insurance described below are the minimum requirements and are not intended to limit the Authority’s access to additional coverage if more coverage is available. All amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

18.2.1. Commercial General Liability Insurance Provider shall maintain commercial general liability insurance. Coverage shall include, but not be limited to, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form
Property Damage including Completed Operations, Broad Form Contractual Liability and XCU Coverages. Limits of coverage shall not be less than the following:

Each Occurrence Personal and Advertising Injury $1,000,000
Products - Completed Operations Aggregate $4,000,000

If the General Liability insurance required herein is issued or renewed on a "claims made" form, as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of any Task under this Agreement and shall provide that in the event of cancellation or non-renewal the discovery period for insurance claims (Tail Coverage) shall be unlimited. If any work is performed airside, the Provider’s coverage must be increased to $5,000,000 in liability coverage.

18.2.2. **Automobile Liability Insurance** shall be maintained by Provider 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 $1,000,000 Combined Single Limit

18.2.3. **Worker’s Compensation and Employers Liability Insurance** shall be maintained by Provider during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Worker’s Compensation
Employer’s Liability

<table>
<thead>
<tr>
<th>Each Accident</th>
<th>Florida Statutory Requirements</th>
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<tr>
<td>$1,000,000</td>
<td></td>
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</table>

18.2.4. Provider must use Authority’s Certificate of Insurance attached as Schedule “C”, 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 Provider's insurance representatives and must be submitted for Authority's review as to acceptability. If any insurance provided under this Agreement expires prior to the completion of the Work, renewal Certificates of Insurance on an acceptable form must be furnished to Authority's Risk Manager at least thirty (30) days prior to the date of expiration. Copies of the renewal policies shall also be furnished to the Risk Manager if requested by Authority.

18.2.5. If Provider does not maintain the insurance coverages required by this Agreement, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Provider for such coverages purchased. Authority shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

19.0 **DUTIES AND OBLIGATIONS IMPOSED ON THE PROVIDER**

The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

20.0 **NOTICE REGARDING PUBLIC ENTITY CRIMES**

Section 287.133(3)(a) (1995) requires the Authority to notify Bidder/Lessee/Tenant of the provisions of Section 287.133(2)(a) F.S.
Section 287.133(2)(a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

A. Contracting to provide goods or services to a public entity.

B. Submitting a bid on a contract for construction or repair of a public building or public work.

C. Submitting bids on leases of real property to a public entity.

D. Being awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of $35,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

21.0 **OWNERSHIP AND TRANSFER OF DOCUMENTS**

All documents relating to the services specifically prepared or developed by the Provider under this Agreement shall be the property of the Provider, until the Provider has been paid for performing the services and work required to produce such documents.

Upon completion, suspension, or termination of this Agreement, all of the above documents, to the extent requested by the Authority, shall be delivered to the Authority or to any subsequent Provider within thirty (30) calendar days.

The Provider, at its expense, may make and retain copies of all documents delivered to the Authority for reference and internal use. Any subsequent use of the
documents and materials listed above shall be subject to the Authority’s prior review and approval.

22.0 **MAINTENANCE OF RECORDS**

The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Provider for a minimum of five (5) years from the date of termination of this Agreement, or for such period as required by law.

The Authority and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Authority deems necessary during the period of this Agreement, and during the period as set forth in the paragraph above; provided, however, such activity shall be conducted only during normal business hours of the Provider and at the expense of the Authority.

23.0 **NO THIRD PARTY BENEFICIARIES**

Nothing contained herein shall create any relationship, contractual or otherwise with, or any rights in favor of, any third party.

24.0 **APPLICABLE LAW**

This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement
shall be brought either in the Florida state courts in Lee County, Florida, or in the United States Federal District Court for the Middle District of Florida, Fort Myers Division. The prevailing party in any such suit or action shall be entitled to recover from the other party their reasonable attorneys' fees and court costs.

25.0 PROHIBITED INTERESTS

No member, officer or employee of the Port Authority or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

26.0 LOBBYING CERTIFICATION

The Port Authority agrees that no Federal appropriated funds have been paid or will be paid by or on behalf of the Port Authority, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Port Authority to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
The Port Authority shall require that the language of this section be included in this award document and any award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

27.0 COVENANTS AGAINST DISCRIMINATION

27.1 DBE Policy. It is the policy of the Department of Transportation (the "DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Provider agrees to ensure that DBE's as defined in 49 CFR Part 23 and Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Provider shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

27.2 Prompt Payment Requirements. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, therefore, the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Provider agrees to pay each subconsultant under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Provider receives from Authority. Provider agrees further to return any retainage payments to each subconsultant within forty-five (45) days after the subconsultant's work is satisfactorily
completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE subconsultants.

27.3 Incorporation of Provisions. Provider shall include the provisions of paragraphs 27.1 through 27.2 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Provider shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Provider may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Provider may request the United States to enter into such litigation to protect the interests of the United States.

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 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

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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.

29.0 **GENERAL CIVIL RIGHTS CLAUSE**

The Contractor agrees to comply with pertinent statute, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or 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.

30.0 **E-VERIFY**

Provider agrees that it will enroll and participate in the U.S. Department of Homeland Security’s E-Verify Program for Employment Verification in accordance with the terms governing use of the Program. The Provider further agrees to provide the Authority with proof of such enrollment within thirty (30) days of the date of this Agreement. Once enrolled, Provider agrees to use the E-Verify Program to confirm the employment eligibility of:
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 under the Agreement.

Provider further agrees that it will require each contractor or subcontractor performing work or providing services under this Agreement to enroll in and use the U.S. Department of Homeland Security's E-Verify Program for Employment Verification to verify the employment eligibility of all persons employed by the contractor or subcontractor during the term of this Agreement.

Provider agrees to maintain records of its participation and compliance with the provisions of the E-Verify Program, including participation by its contractors and subcontractors as provided above, and to make such records available to the Authority or other authorized state or federal agency consistent with the terms of this Agreement.

Compliance with the terms of this Section is made an express condition of this Agreement, and the Authority may treat failure to comply as a material breach of the Agreement and grounds for immediate termination.

31.0 HEADINGS

The headings of the Articles, Sections, Exhibits, and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits and Attachments.
32.0 NOTICES AND ADDRESS

32.1 All notices required and/or made pursuant to this Agreement to be given by either party to the other shall be in writing and shall be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

LEE COUNTY PORT AUTHORITY  
11000 Terminal Access Road, Suite 8671  
Fort Myers, FL 33913  
Attention: Airport Executive Director

Attention:_____________________

32.2 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.

33.0 TERMINATION OR SUSPENSION

33.1 Provider shall be considered in material default of this Agreement and such default will be considered cause for Authority to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under any Task Authorization, or (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 Provider, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. Authority may so
terminate this Agreement, in whole or in part, by giving Provider seven (7) calendar days written notice.

33.2. If, after notice of termination of this Agreement, it is determined for any reason that Provider was not in default, or that its default was excusable, or that Authority was not entitled to the remedies against Provider provided herein, then Provider's remedies against Authority shall be the same as and limited to those afforded Provider under paragraph 31.3. below.

33.3. Authority shall have the right to terminate this Agreement, in whole or in part, without cause upon thirty (30) calendar days written notice to Provider. In the event of such termination for convenience, Provider's recovery against Authority shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Provider that are directly attributable to the termination, but Provider shall not be entitled to any other or further recovery against Authority, including, but not limited to, anticipated fees or profits on work not required to be performed.

33.4. Upon termination, Provider shall deliver to Authority all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement.

33.5. Authority shall have the power to suspend all or any portions of the services to be provided by Provider hereunder upon giving Provider 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, Provider's sole and exclusive remedy shall be an extension of time to its schedule.

34.0 **TERMINATION UNDER SECTION 287.135, F.S.**

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if Consultant is found to have submitted a false certification under Section 287.135(5), F.S. (2016), 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.

35.0 **WAIVER OF BREACH**

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

36.0 **ENTIRE AGREEMENT**

This Agreement, including the referenced Exhibits and Attachments, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.

37.0 **AMENDMENTS**

The terms and provisions contained in 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),

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the requirements, provisions and/or terms of the latest executed Amendment(s) shall take precedence.

38.0 MODIFICATIONS

Modifications to the terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Amendment(s) or Supplemental Task Authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Amendment(s) or Supplemental Task Authorization(s), the latest executed Amendment(s) or Supplemental Task Authorization(s) shall take precedence.

39.0 SEVERABILITY

If any word, phrase, sentence, part, subsection, or other portion of this Agreement, or any application thereof, to any person, or circumstances is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not have been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

40.0 ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties in the space provided.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first written above.
EXHIBIT “A”

SCOPE OF SERVICES

Provider must furnish all labor, materials and equipment to clean, filter, polish and remEDIATE fuel tanks in accordance with this Scope of Work.

1. Filtering. Provider will be required to remove free water, moisture, sediment and other contaminants from the fuel through a filter down to 1 micron (nominal). Filter size will be determined based on the type of contaminants. The amount of fuel within each tank shall be turned over (or processed) three to five times as necessary to properly filter out contaminants.

2. Cleaning. Provider must use suction and discharge hoses to create a low through the tanks that are being cleaned. During the suction process, the suction wand must be manipulated around the tank in order to reach as much area of the tank as possible.

3. Sampling. Provider must take fuel samples from the center and bottom of the tank when the polishing is complete and send to a third party independent lab for testing. All results and reports must be forwarded to the Authority on the same day of receipt.

3.1. Lab analyses must be provided by a third party that conforms to ASTM D975 and AHCA standards including:

3.1.1 API gravity;
3.1.2 Cetane index;
3.1.3 Corrosion copper strip;
3.1.4 Dissolve water by Karl Fischer titration determination;
3.1.5 Distillation;
3.1.6 90% recovery;
3.1.7 Flash point;
3.1.8 Microbial growth;
3.1.9 Sulfur content by Fluorescence;
3.1.10 Visual appearance; and
3.1.11 Water & sediment.

4. Polishing. Provider must be responsible for polishing tanks to the satisfaction of the Authority.

5. Safety. Provider must follow industry standards ANSI/API and ensure safe operation of all equipment at all times.

Provider must comply with all federal, state and local laws and regulations regarding the safe handling and disposal of petroleum products and/or contaminated waste water.

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6. Access to Site: Provider's employees will be permitted unrestricted access to all areas of the site needed to perform scope of work.

7. Provider must perform all services in accordance with this scope of work. No changes in scope or pricing that vary from the Provider's bid will be permitted unless authorized in writing by the Authority. All invoices, reports and other written documents prepared by Provider must contain the Purchase Order number and Authority SPCC plan identifier number.
<table>
<thead>
<tr>
<th>SPCC Plan Identifier</th>
<th>Location</th>
<th>Category</th>
<th>Type</th>
<th>Contents</th>
<th>Capacity (gallons)</th>
<th>Construction</th>
<th>Total Price Per Tank</th>
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<td>Single-walled HDPE</td>
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<td>Grounds Maintenance</td>
<td>Fixed Bulk Storage Container</td>
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<td>Diesel</td>
<td>6,000</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Lift Station</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>1,000</td>
<td>Single-walled steel with concrete outer wall</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>Generator Day Tank</td>
<td>Diesel</td>
<td>85</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>1,000</td>
<td>Single-walled steel with concrete outer wall</td>
<td></td>
</tr>
<tr>
<td>11a</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>Generator Day Tank</td>
<td>Diesel</td>
<td>85</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Concourse B</td>
<td>Fixed Bulk Storage Container</td>
<td>UST³</td>
<td>Diesel</td>
<td>4,000</td>
<td>Double-walled fiberglass</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Concourse B</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Concourse C</td>
<td>Fixed Bulk Storage Container</td>
<td>UST³</td>
<td>Diesel</td>
<td>4,000</td>
<td>Double-walled fiberglass</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Concourse C</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Concourse D</td>
<td>Fixed Bulk Storage Container</td>
<td>UST³</td>
<td>Diesel</td>
<td>4,000</td>
<td>Double-walled fiberglass</td>
<td></td>
</tr>
<tr>
<td>Site</td>
<td>Location</td>
<td>Equipment Type</td>
<td>Material</td>
<td>Storage Capacity</td>
<td>Construction Type</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
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<td>-----------------------------------------</td>
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<td>------------------</td>
<td>-------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Concourse D</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Parking Garage</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>2,000</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>ARFF</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>4,000</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>ARFF</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>2,000</td>
<td>Double-walled steel</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>Ramp</td>
<td>Portable Bulk Storage Container</td>
<td>Equip. reservoir for ground power unit</td>
<td>Diesel</td>
<td>70</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Ramp</td>
<td>Portable Bulk Storage Container</td>
<td>Equip. reservoir for ground power unit</td>
<td>Diesel</td>
<td>70</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Vehicle Maintenance</td>
<td>Portable Bulk Storage Container</td>
<td>Equip. reservoir for mobile pump</td>
<td>Diesel</td>
<td>100⁴</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Vehicle Maintenance</td>
<td>Portable Bulk Storage Container</td>
<td>Equip. reservoir for mobile pump</td>
<td>Diesel</td>
<td>100⁴</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Vehicle Maintenance</td>
<td>Portable Bulk Storage Container</td>
<td>Equip. reservoir for mobile pump</td>
<td>Diesel</td>
<td>100⁴</td>
<td>Single-walled steel</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Toll Plaza</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>155</td>
<td>Single-walled Steel</td>
<td></td>
</tr>
</tbody>
</table>

¹ SPCC Plan Identifier is the name of the bulk storage container, mobile/portable bulk storage container areas, or oil-filled equipment and the associated piping.
² The numbers of drums and aggregate capacities for drum storage areas are representative of what is typically present and may vary.
³ Underground Storage Tanks (USTs) are subject to the United States EPA regulations for USTs and therefore exempt from SPCC regulations.
⁴ The pump manufacturer indicated that the storage capacity for this pump type ranges from 70-100 gallons.
CERTIFICATE OF LIABILITY INSURANCE

Policy Number: ENCO02468-02
Date Entered: 8/29/2019

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

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

PRODUCER
Donovan Insurance Solutions
1 E. Tarpon Avenue
Tarpon Springs, FL 34689

INSURED
1-800 Fuel Guy dba Tank Kleen
1000 Roosevelt Blvd
Tarpon Springs, FL 34689

INSURER
Lloyds of London

COVERAGES
CERTIFICATE NUMBER: ENC0002468-02

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

<table>
<thead>
<tr>
<th>LYT</th>
<th>TYPE OF INSURANCE</th>
<th>RISK ID</th>
<th>WHO</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF (MM/DD/YYYY)</th>
<th>POLICY EXP (MM/DD/YYYY)</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>CLAIMS-MADE</td>
<td>OCCUR</td>
<td>ENC0002468-02</td>
<td>6/15/2019</td>
<td>6/15/2020</td>
<td>EACH OCCURRENCE</td>
</tr>
<tr>
<td></td>
<td></td>
<td>INCLUDING pollution</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>DAMAGE TO HUNTED PREMISES (EA occurrence) $1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>MED EXP (any one person) $10,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>PERSONAL &amp; ADV INJURY $1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>GENERAL AGGREGATE $1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>PRODUC TS - COMP/OP AGG $1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Ded $2,500</td>
</tr>
<tr>
<td>B</td>
<td>UMBRELLA LIABILITY</td>
<td>OCCUR</td>
<td>CLAIMS-MADE</td>
<td>ENC0000153-02</td>
<td>6/15/2019</td>
<td>6/15/2020</td>
<td>EACH OCCURRENCE</td>
</tr>
<tr>
<td></td>
<td>EXCESS LIABILITY</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>AGGREGATE $3,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

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

certificate holder is named as additional insured to the extent of contract

CERTIFICATE HOLDER
Lee County Port Authority
11000 Terminal Access Rd
Suite 8671
Fort Myers, FL 33913

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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EXHIBIT "C"
CERTIFICATE OF INSURANCE

In consideration of the premiums charged on the insurance policies shown in this certificate, this certificate of insurance is issued to the certificate holder shown below. This certificate does not amend, extend or alter the coverage afforded by the policies listed below except as shown below:

<table>
<thead>
<tr>
<th>Name and Address of Agency</th>
<th>COMPANIES AFFORDING COVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>COMPANY</td>
</tr>
<tr>
<td></td>
<td>LETTER A</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>COMPANY</td>
</tr>
<tr>
<td></td>
<td>LETTER B</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Name and Address of Insured</td>
<td>COMPANY</td>
</tr>
<tr>
<td></td>
<td>LETTER C</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>COMPANY</td>
</tr>
<tr>
<td></td>
<td>LETTER D</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>COMPANY</td>
</tr>
<tr>
<td></td>
<td>LETTER E</td>
</tr>
</tbody>
</table>

This is to verify that the insurance policies listed below have been issued to the insured and are in force at this time. It is agreed that none of these policies will be cancel or changed, except in the application of the aggregate liability limits provisions, so as to affect the insurance described by this certificate until after 30 days written notice of such cancellation or change has been delivered to the certificate holder at this address shown below. It is also agreed that 30 days written notice by the insurance companies listed above of their intent to renew their policies listed below for the same coverage provided in this certificate will be given to the certificate holder as their address shown below. The policies shown in this certificate are primary to any insurance carried by the certificate holder.

<table>
<thead>
<tr>
<th>Company Letter</th>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Effective Date (mm/dd/yyyy)</th>
<th>Policy Expiration Date (mm/dd/yyyy)</th>
<th>ALL LIMITS IN THOUSANDS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>GENERAL LIABILITY</td>
<td></td>
<td></td>
<td></td>
<td>General Aggregate</td>
</tr>
<tr>
<td></td>
<td>Commercial General Liability</td>
<td></td>
<td></td>
<td></td>
<td>Products Comp/Ops Aggregate</td>
</tr>
<tr>
<td></td>
<td>Claims Made □ Occurrence</td>
<td></td>
<td></td>
<td></td>
<td>Personal &amp; Advertising Injury</td>
</tr>
<tr>
<td></td>
<td>Owners &amp; Contractors □ Protective</td>
<td></td>
<td></td>
<td></td>
<td>Each Occurrence</td>
</tr>
<tr>
<td></td>
<td>X.C.L. Coverage □</td>
<td></td>
<td></td>
<td></td>
<td>Fire Damage (Any one Fire)</td>
</tr>
<tr>
<td></td>
<td>Broad Form Property Damage □</td>
<td></td>
<td></td>
<td></td>
<td>Medical Expense (Any one Person)</td>
</tr>
<tr>
<td></td>
<td>Indemnity Exclusions □</td>
<td></td>
<td></td>
<td></td>
<td>Specific Property*</td>
</tr>
<tr>
<td></td>
<td>AUTOMOBILE LIABILITY</td>
<td></td>
<td></td>
<td></td>
<td>Aggregate</td>
</tr>
<tr>
<td></td>
<td>Any Auto □</td>
<td></td>
<td></td>
<td></td>
<td>Bodily Injury (Each Person) $</td>
</tr>
<tr>
<td></td>
<td>All owned Autos □</td>
<td></td>
<td></td>
<td></td>
<td>Bodily Injury (Each Accident) $</td>
</tr>
<tr>
<td></td>
<td>Scheduled Autos □</td>
<td></td>
<td></td>
<td></td>
<td>Property Damage $</td>
</tr>
<tr>
<td></td>
<td>Hired Autos □</td>
<td></td>
<td></td>
<td></td>
<td>Bodily Injury and Property Damage Combined $</td>
</tr>
<tr>
<td></td>
<td>Non-Owned Autos □</td>
<td></td>
<td></td>
<td></td>
<td>Each Occurrence $</td>
</tr>
<tr>
<td></td>
<td>EXCESS LIABILITY</td>
<td></td>
<td></td>
<td></td>
<td>Aggregate</td>
</tr>
<tr>
<td></td>
<td>Umbrella Form □</td>
<td></td>
<td></td>
<td></td>
<td>Bodily Injury and Property Damage Combined $</td>
</tr>
<tr>
<td></td>
<td>Other than Umbrella Form □</td>
<td></td>
<td></td>
<td></td>
<td>Statutory $</td>
</tr>
<tr>
<td></td>
<td>Claims Made □ Occurrence</td>
<td></td>
<td></td>
<td></td>
<td>(Disease-Policy Limit) $</td>
</tr>
<tr>
<td></td>
<td>WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY</td>
<td></td>
<td></td>
<td></td>
<td>(Disease-Each Employer) $</td>
</tr>
</tbody>
</table>

Draft for Discussion Purposes Only
Port Authority Attorney’s Office
8/7/2019
<table>
<thead>
<tr>
<th>OTHER</th>
</tr>
</thead>
</table>

☐ Contractual Liability Coverage

Description of Contract:

☐ The Certificate Holder has been named as an additional insured as respects the General, Automobile, and Excess Liability Policies described here.

☐ The General, Automobile and Excess Liability Policies described provide the severability of interest (cross-liability) provision applicable to the named insured and the Certificate Holder.

☐ Copy of the agent's license, or other proof of representation, with each insurance company, named above must be attached to this certificate.

---

**DESCRIPTION OF OPERATIONS/Locations/VEHICLES/SPECIAL ITEMS**

**SPECIFIC PROJECT/LOCATION/VEHICLES/SPECIAL CONDITIONS:**

<table>
<thead>
<tr>
<th>Lee County Port Authority</th>
<th>Name and Address of Certificate Holder</th>
</tr>
</thead>
<tbody>
<tr>
<td>11000 Terminal Access Road</td>
<td>Date Issued:</td>
</tr>
</tbody>
</table>

---

Draft for Discussion Purposes Only

Port Authority Attorney's Office

8/7/2019
CERTIFICATE OF INSURANCE EXPLANATION

The Certificate Holder (CH), requires the use of its Certificate of Insurance as evidence that the insurance requirements of the agreement have been complied with and will continue to be complied with as long as the agreement is in force. CH must rely on this certificate as proof of compliance with the insurance requirements agreed upon. The CH must be advised of cancellation or nonrenewal of the insurance coverage required or reduction in the coverage provided in compliance with the agreement as shown in the Certificate of Insurance. Thirty-day written notice of cancellation, nonrenewal, or reduction in coverage must be provided to the CH so that it can take proper action to protect itself.

Many Certificates of Insurance are received by the CH and many contain wording to the effect that the certificate is issued as a matter of information only and confers no rights upon the certificate holder. A common example of this unacceptable language is: should any of the above-described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the named holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

The CH must have the right of notice of cancellation, nonrenewal, and reduction of coverage, as this is part of the insurance requirements of the agreement entered into and to be relied upon by the CH as evidenced through its Certificate of Insurance.

The requirement that the authorized representative signing the Certificate of Insurance attach his agent’s license with the insurance company or companies, or other acknowledgment by the insurance company or companies shown in the certificate, is to show proof to the CH that the person signing the certificate is legally authorized by the insurance company to so obligate them, as referred to in the certificate.

The CH must have positive evidence in the form of its Certificate of Insurance that the insurance requirements of the agreement entered into have been met and will continue to be met, without interruption, during the term of the agreement entered into unless thirty days written notice is given to it.

No activity shall begin until the CH’s properly executed Insurance Certificate is received. Your cooperation in providing the CH with acceptable evidence of insurance requirements compliance, as agreed to in the agreement, will prevent confusion and delay in allowing the subject matter of this agreement to be accomplished.

The acceptance of delivery to the CH of any Certificate of Insurance required in any contract does not constitute agreement by the CH that the insurance requirements in the contract have been met or that the insurance policies shown in the certificate are in compliance with the contract requirements.

SEVERABILITY OF INTERESTS PROVISION

With respect to claims involving any insured at interest hereunder, each such interest shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured. This agreement, however, shall not operate to increase the limits of the Insurance Company’s liability.
LEE COUNTY PORT AUTHORITY

Posted Date: August 27, 2019

Solicitation No.: RFB 19-15LD

Solicitation Name: Fuel Tank Polishing for Lee County Port Authority at Southwest Florida International Airport

Subject: Addendum Number 1

Interested parties are officially informed that the above-referenced solicitation is hereby revised, changed, and supplemented as set forth in the following pages.

Incorporation of this addendum must be acknowledged on the Bidder’s Certification Form.

ATTACHMENT: A1-1 Add 1 Revised Page 13. (Part C, Scope of Work)

| 1. | We are in the process of filling out your bid request for Fuel Tank Polishing and came across a section that gave us pause. In the Service Provider Agreement, Exhibit A, number 3, it states that after fuel polishing, we must take (2) samples from the center and bottom of the tank. Based on the size of a tank, this could mean that these samples could be less than a foot apart. This would essentially mean you would be paying to test the same fuel sample twice. There is a large expense associated with third party laboratory testing and we want to clarify that this is what you are requesting in your Scope of Services. Could you please clarify this for us? |
| Answer | Part C, Scope of Work item 3 clarification: **Tanks 5,999 gallons or less** will require one sample from the bottom of the tank. **Tanks 6,000 and greater** will require two samples one from center and one from bottom of the tank. The final version of the Service Provider Agreement will be updated to include the clarification in Scope of Work per this addendum. |

Reminder: Submittals are due: Tuesday, September 03, 2019, prior to 2:00 PM (local time), 11000 Terminal Access Road, Third Floor Suite 8671, Fort Myers, FL 33913-8899

**BIDDER IS REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER BEING CONSIDERED NON-RESPONSIVE.**

**ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS REMAIN THE SAME.**

Melissa Wendel, CPPO
Procurement Manager
Lee County Port Authority

cc: Greg Hagen, Port Authority Attorney
    James Furiosi, Maintenance Department Director
    Lori K. DeLoach, CPPB, Senior Procurement Agent
PART C - PROJECT INFORMATION AND REQUIREMENTS

RFB 19-15LD
FUEL TANK POLISHING FOR THE LEE COUNTY PORT AUTHORITY
AT SOUTHWEST REGIONAL INTERNATIONAL AIRPORT

SCOPE OF WORK

Lee County Port Authority requires the services of a qualified vendor to provide all labor, materials and equipment to clean, filter, polish and remediate fuel tanks in accordance with the Scope of Work.

1. **Filtering.** The successful Bidder will be required to remove free water, moisture, sediment and other contaminants from the fuel through a filter down to 1 micron (nominal). Filter size will be determined based on the type of contaminants. The amount of fuel within each tank shall be turned over (or processed) three to five times as necessary to properly filter out contaminants.

2. **Cleaning.** The successful Bidder shall use suction and discharge hoses to create a flow through the tanks that are being cleaned. During the suction process, the suction wand must be manipulated around the tank in order to reach as much area of the tank as possible.

3. **Sampling.** The successful Bidder will take fuel samples from the center and bottom of the tank when the polishing is complete. Tanks 5,999 gallons or less will require one sample from the bottom of the tank. Tanks 6,000 gallons and greater will require two samples, one taken from the center, and one from the bottom of the tank, and send Samples will be sent to a third party independent lab for testing. All results and reports must be forwarded to the Authority on the same day of receipt.

3.1. Lab analyses must be provided by a third party that conforms to ASTM D975 and AHCA standards including:

3.1.1. API gravity,
3.1.2. Cetane index,
3.1.3. Corrosion copper strip,
3.1.4. Dissolved water by Karl Fischer titration determination,
3.1.5. Distillation,
3.1.6. 90% recovery,
3.1.7. Flash point,
3.1.8. Microbial growth,
3.1.9. Sulfur content by Fluorescence,
3.1.10. Visual appearance, and
3.1.11. Water & sediment.

4. **Polishing.** The successful Bidder must be responsible for polishing tanks to the satisfaction of the Authority.

5. **Safety.** The successful Bidder vendor must follow industry standards ANSI/API and ensure safe operation of all equipment at all times.
Lee County Port Authority

Service Provider Agreement

Fuel Tank Polishing for Lee County Port Authority at

Southwest Florida International Airport

RFB 19-15LD

This Agreement is entered this_____ day of ____________, 2019, between the Lee County Port Authority, a political subdivision and special district of the State of Florida ("Authority"), at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and 1800 FuelGuy, LLC, d/b/a Tank Kleen, a Florida limited liability company, ("Provider"), at P.O. Box 219, Tarpon Springs, FL 34688, Federal Identification Number 81-1762387.

WITNESSETH

WHEREAS, the Authority desires to obtain fuel tank polishing services from Provider as described below for the Southwest Florida International Airport in Fort Myers, Florida; and,

WHEREAS, the Provider certifies that it has been granted and possesses valid, current licenses to do business in the State of Florida and in Lee County, Florida, issued by any applicable State Boards or Government Agencies responsible for regulating and licensing the services to be provided by the Provider under this Agreement; and,

WHEREAS, Provider has reviewed the services required under this Agreement and has submitted a Bid to provide the requested services, and states that it is qualified,
willing and able to provide and perform all such services and provide any goods
required according to the provisions, conditions and terms below, and in accord with all
governing federal, state and local laws and regulations; and,

WHEREAS, the Provider has been selected to provide the services described
below as the result of a competitive selection process by Authority that complies with any
applicable Florida Statues and the Authority's Purchasing Policy, as approved and put
into effect by the Authority's Board of Port Commissioners.

NOW, THEREFORE, in consideration of the foregoing and the terms and
provisions as contained herein, and the mutual consideration described below, the
parties agree as follows:

1.0 RECITALS

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

2.0 DEFINITIONS

2.1 AUTHORITY shall mean the Lee County Port Authority and its governing
Board of Port Authority Commissioners.

2.2 PROVIDER shall mean the individual, firm or entity offering services that it
shall be legally obligated, responsible, and liable for providing and performing and any
and all of the services, work and materials, including services and/or the work of
sub-contractors, required under this Agreement.

2.3 BASIC SERVICES shall mean all services, work, materials and all related
administrative activities that are necessary to perform and complete the services required
by the Scope of Services of this Agreement.
2.4 **ADDITIONAL SERVICES** shall mean any additional services that the Authority may request from Provider and authorize, in writing, which are not included in the Scope of Services.

2.5 **SUPPLEMENTAL AGREEMENT** shall mean a written document executed by both parties to this Agreement setting forth such changes to the Scope of Services as may be requested and authorized in writing by the Authority.

3.0 **SCOPE OF SERVICES**

Provider hereby agrees to perform the services set forth in Exhibit "A", entitled "Scope of Services", which is attached hereto and made a part of this Agreement.

Authority will authorize all Basic Services under this Agreement by issuing a purchase order detailing the services to be performed and the schedule for performing those services. Compensation for services will be paid in accord with Section 8.0 below, and the compensation schedule set forth in Exhibit “B”, which is attached and made a part of this Agreement.

4.0 **REQUEST FOR BIDS AND PROVIDER’S BID - INCORPORATION BY REFERENCE**

The terms of the Request for Bids, and Provider’s Bid received in response, 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 this Agreement and the Request for Bids; or between this Agreement and Provider’s Bid; 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 those
representations and this information has resulted in the selection of Provider to provide
goods or perform services under this Agreement.

5.0 TERM

The term of this Agreement shall be for one (1) year commencing on the date first
written above. The Authority will have the option to extend the term of this Agreement
for up to three (3) additional years, in increments of one (1) year each, from the expiration
date of the initial term, and any extended term, on the same terms and conditions,
including pricing, as the initial term. Any such extension shall be executed with the same
formality as the original Agreement. If Authority decides to exercise the option to extend
the term of the Agreement, it will notify the Provider no later than thirty (30) days before
the expiration date of the initial term or any extended term.

6.0 OBLIGATIONS OF THE PROVIDER

The obligations of the Provider with respect to all the Basic Services and any
Additional Services authorized under this Agreement shall include, but are not limited to
the following:

6.1 LICENSES

The Provider agrees to obtain and maintain throughout the term of this
Agreement, all such licenses as are required to do business in the State of Florida and in
Lee County, Florida, including, but not limited to, licenses required by any applicable State
Boards or other governmental agencies responsible for regulating and licensing the
services provided and performed by the Provider under this Agreement.
6.2 PERSONNEL

(1) **Qualified Personnel** - The Provider agrees that when the services to be provided and performed relate to (a) professional service(s) which, under Florida Statutes, require 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 services to be provided under this Agreement. Services performed under this Agreement shall be performed by Provider's own staff, unless agreed in advance by the Authority.

(2) **Project Manager** - Provider agrees to employ and designate a qualified, licensed professional to serve as Provider's project manager ("Project Manager") for this Agreement. Provider shall designate its Project Manager in writing within five (5) calendar days after receiving an executed original of this Agreement. Provider's Project Manager designation shall be executed by the proper officers of Provider, and shall acknowledge that the Project Manager shall have full authority to bind and obligate Provider on all matters arising out of or relating to this Agreement. The Project Manager shall be specifically authorized and responsible to act on behalf of Provider with respect to directing, coordinating and administering all aspects of the services provided under this Agreement. Provider agrees that the Project Manager shall devote whatever time is required to satisfactorily manage all services provided by Provider under this
Agreement. Provider 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.

Provider further agrees to promptly remove and replace the Project Manager, or any other personnel employed or retained by Provider, or any subcontractor or any personnel of any such subcontractor engaged by Provider 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.

6.3 **STANDARDS OF SERVICE**

The Provider agrees to provide and perform all services under this Agreement in accordance with 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 to be provided and/or performed by the Provider.

6.4 **CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES**

1. **Responsibility to Correct** - The Provider agrees to be responsible for the quality, technical adequacy and accuracy, timely completion, and the coordination of all services, work and materials performed, provided, and/or furnished by Provider. The Provider shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of
Provider or any persons employed by Provider or performing services at Provider's direction under this Agreement.

(2) Authority's Approval Shall Not Relieve Provider of Responsibility - Neither review, approval, nor acceptance by Authority of any services, work or materials furnished hereunder by the Provider, shall in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials. Neither the Authority's review, approval or acceptance of, nor payment for, any part of the Provider's services, work and materials shall 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.

6.5 ADDITIONAL SERVICES

If Authority requests the Provider to provide and perform services under this Agreement that are not set forth in Exhibit "A", the Provider agrees to provide and perform such additional services as may be agreed to in writing by both parties to this Agreement.

Such additional services shall constitute a continuation of the services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms and provisions as set forth in this Agreement and any Amendment(s) to this Agreement.

Additional services shall be administered and executed as Supplemental Task Authorizations under the Agreement. The Provider shall not provide or perform, nor shall the Authority incur or accept any obligation to compensate the Provider for any
additional services, unless a written Supplemental Task Authorization has been executed by the parties.

Each Supplemental Task Authorization shall set forth a description of: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing the additional services.

7.0 AUTHORITY’S RESPONSIBILITIES

Authority shall:

7.1 Designate in writing a project manager to act as Authority’s representative with respect to the issuance of Task Authorizations for services rendered under this Agreement (“Project Manager”). The Project Manager shall have exclusive authority to execute Task Authorizations, and any modifications or changes to Provider’s (1) scope of services; (2) time of commencement or delivery; or (3) compensation related to services required under any Task Authorization. The Project Manager shall have authority to transmit instructions, receive information, and to interpret and define Authority’s policies and decisions with respect to Provider’s services under this Agreement. The Project Manager shall review and make appropriate recommendations on all requests submitted by Provider for payment for services.

7.2 The Project Manager is not authorized to, and shall not, issue any verbal orders or instructions to Provider 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 Provider hereunder; (2) the time Provider is obligated to commence and complete all such services; or (3) the compensation Authority is obligated or committed to pay Provider.
7.3 Provide all criteria and information requested by Provider 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.

7.4 Upon request from Provider, make available to Provider all available information in Authority's possession pertinent to any Task Authorization, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data concerning design or construction of a project.

7.5 Arrange access, in accord with Authority's security regulations, for Provider to enter any project site to perform services. Provider acknowledges that Authority may provide such access during times that are not the Provider's normal business hours.

7.6 Notify Provider of any defects or deficiencies in services rendered by Provider.

8.0 COMPENSATION AND METHOD OF PAYMENT

8.1 BASIC SERVICES

Authority will pay Provider for all requested and authorized basic services completed in accordance with the requirements, provisions, and/or terms of this Agreement based on the compensation schedule in Exhibit "B.

8.2 ADDITIONAL SERVICES

The Authority shall pay the Provider for all additional services, that have been requested and authorized by the Authority and agreed to in writing by both parties to this Agreement, and are completed according to the terms of compensation and
payment of said additional services based on the compensation schedule set forth in Exhibit "B."

8.3 METHOD OF PAYMENT

(1) LUMP SUM

Upon Authority's acceptance of Provider's work on any Task, Authority will pay Provider a lump sum as specified in Exhibit "B". 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, and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Provider as may be required and/or necessary to complete each and every task set forth in the Scope of Services and assigned by purchase order.

(2) MONTHLY STATEMENTS

If agreed by the parties, the Provider may submit not more than one invoice to the Authority for each calendar month. The monthly invoice shall cover services rendered and completed during the preceding calendar month. The Provider shall submit its invoices to the Authority's Finance Department. The Provider's invoice(s) shall be itemized to correspond to the basis of compensation as set forth in this Agreement, or any Amendment or Supplemental Agreement.
Invoices shall include an itemized description of the project, the amount of time expended, and a description of the goods and services provided. Failure by the Provider to follow these instructions shall result in an unavoidable delay of payment by the Authority.

(3) PAYMENT SCHEDULE

The Authority shall issue payment to the Provider within forty-five (45) calendar days after 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 shall notify the Provider of such objection or exception within forty-five (45) days of receipt of the invoice. If such objection or exception remains unresolved at the end of the forty-five (45) day period, the Authority shall withhold the disputed amount and make payment to the Provider of all amounts not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties to this Agreement.

8.4 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE AUTHORITY

In the event of termination of this Agreement for the convenience of the Authority, the Authority shall compensate the Provider for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the Provider in effecting the termination of services and work, and incurred by the submittal to the Authority of any project documents.
8.5 **PAYMENT WHEN SERVICES ARE SUSPENDED**

If the Authority suspends the Provider’s services or work on all or part of the services required by this Agreement, the Authority shall compensate the Provider 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 such suspension.

8.6 **NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE IN SCOPE OF SERVICES**

If the services required under this Agreement are terminated, canceled, or decreased due to: (1) termination; (2) suspension in whole or in part; and (3) and/or are modified by the subsequent issuance of Amendment(s) and/or Supplemental Agreement(s); the Provider shall not be entitled to receive compensation for anticipated fees; profit, general and administrative overhead expenses or any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, canceled or decreased.

9.0 **PROJECT SCHEDULE**

9.1. Provider shall commence work under this Agreement following the date of execution of this Agreement, as shown on the date first written above and upon issuance of Authority’s purchase order(s) describing the work to be performed.

9.2. If Provider is obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of Provider, and not due to its own fault or neglect, including but not restricted to: Acts of God or of public enemies, acts of government or of Authority, fires, floods, epidemics, quarantine
regulations, strikes or lock-outs, then Provider shall notify Authority in writing within seventy-two (72) hours after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Provider may have had to request a time extension.

9.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of Provider’s services from any cause whatsoever, including those for which Authority may be responsible in whole or in part, shall relieve Provider of its duty to perform services or give rise to any right to damages or additional compensation from Authority. Provider’s sole remedy against Authority will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

10.0 **INDEMNIFICATION**

Provider shall indemnify, hold harmless and defend Authority and Lee County, Florida, and their respective commissioners, officers, agents, and anyone employed directly or indirectly by either of them, from and against all claims, injuries, liabilities, damages, demands, losses, costs or actions, either at law or in equity, including, but not limited to, court costs and reasonable 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, wrongful conduct or intentional act or omission or based on any action of fraud or defalcation of Provider, or other persons employed or utilized by Provider in the performance of this Agreement.
If this indemnity provision is deemed void under Florida law, then the Provider shall indemnify and hold harmless Lee County, the 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 liabilities, damages, losses or costs including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Provider or persons employed or utilized by the Provider in the performance of the services under this Agreement.

11.0 FAILURE TO PERFORM

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

12.0 PUBLIC RECORDS

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

(1) **Airport Security Plans** - The Southwest Florida International Airport security plan, and other critical operational materials designated by the Authority, are exempt from disclosure as public records under Section 331.22, Florida Statutes (2001).
These materials include, but are not limited to, any photograph, map, blueprint, drawing, or similar material that depicts critical operational information that the Authority determines could jeopardize airport security if generally known.

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

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

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

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

13.0 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 agent, employee, subcontractor, or invitee of the Provider, Provider shall notify the Airport's Police Department that the 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 agent, employee, subcontractor, or invitee of the Provider, Provider shall surrender any Airport Security Identification Badge held by the Provider or by Provider's agents, employees, subcontractors, or invitees. Should Provider fail to surrender these items within five (5) days, the Provider shall be assessed a fee of Twenty-Five Dollars ($25.00) per identification badge not returned. This fee will be billed to the Provider or deducted from any money owing to the Provider, at the Authority's discretion.

14.0 ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Provider shall not assign or transfer any of its rights, benefits or obligations hereunder, without the prior written consent of Authority. The Provider shall have the right, subject to the Authority's prior written approval, to employ other persons and/or firms to serve as subcontractors to Provider in connection with the Provider's performance of services and work under the requirements of this Agreement.

15.0 PROVIDER AN INDEPENDENT CONTRACTOR

The Provider is an independent contractor and is not an employee or agent of the Authority. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the Authority and Provider, its employees, agents, subcontractors or assigns, during or after the performance of this Agreement.
16.0 **F.A.A. NON-DISCRIMINATION CLAUSE**

The Provider, for itself, its successors in interest, and assigns, as part of the consideration hereof, agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its D.B.E. program or the requirements of 49 CFR Part 26.

17.0 **F.A.A. DISADVANTAGED BUSINESS ENTERPRISE (D.B.E. CLAUSE)**

The Provider or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Provider shall carry out applicable requirements of 49 CFR Part 23 and Part 26 in the award and administration of DOT-assisted contracts. Failure by the Provider 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 Port Authority deems appropriate.

18.0 **INSURANCE**

During the term of this Agreement, Provider shall provide, pay for, and maintain, with companies satisfactory to Authority, the types of insurance described herein. Provider further agrees to provide Authority's Risk Manager with advance written notice of the cancellation or non-renewal of any required insurance coverage and to obtain replacement coverage as soon as possible. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies registered with the State of Florida. Promptly after execution of this Agreement by both parties, the Provider must obtain insurance coverages and limits required as set out below and evidenced by properly executed Certificates of Insurance on forms which are acceptable to the Authority's Risk Manager.
The Certificates must be signed by an Authorized Representative of the insurance company/companies shown on the Certificates with proof that he or she is an authorized representative thereof. In addition, copies of all insurance policies shall be provided to Authority, on a timely basis, if requested by Authority.

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 with 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 Provider from potential insurer insolvency.

All policies of insurance shall contain provisions that advance written notice shall be given to Authority of any cancellation, intent not to renew, material change or alteration, or reduction in the policies' coverages, except in the application of the Aggregate Limits provision of any policy. In the event of a reduction in the Aggregate Limit of any policy, Provider shall immediately take steps to have the Aggregate Limit reinstated to the full extent permitted under such policy. All of Provider's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include waiver of subrogation in favor of Authority.

The acceptance by Authority of any Certificate of Insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the
insurance policies shown in the Certificates of Insurance are in compliance with the requirements of this Agreement.

All of Provider's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include a waiver of subrogation in favor of Authority.

No work shall commence on any Task assigned under this Agreement unless and until the required Certificates of Insurance are received and approved by Authority.

18.1. INSURANCE REQUIRED

Before starting and until acceptance of any work by Authority, Provider shall procure and maintain insurance of the types and to the limits specified in paragraphs 18.2.1 through 18.2.5, inclusive below. All liability insurance policies obtained by Provider to meet the requirements of this Agreement, other than Worker's Compensation and Employer's Liability policies, shall name Authority as an additional insured as to the services of Provider under this Agreement and shall contain the severability of interests provisions.

18.2. COVERAGES

The amounts and types of insurance described below are the minimum requirements and are not intended to limit the Authority's access to additional coverage if more coverage is available. All amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

18.2.1. Commercial General Liability Insurance Provider shall maintain commercial general liability insurance. Coverage shall include, but not be limited to,
Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage including Completed Operations, Broad Form Contractual Liability and XCU Coverages. Limits of coverage shall not be less than the following:

- Each Occurrence Personal and Advertising Injury: $1,000,000
- Products - Completed Operations Aggregate: $4,000,000

If the General Liability insurance required herein is issued or renewed on a "claims made" form, as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of any Task under this Agreement and shall provide that in the event of cancellation or non-renewal the discovery period for insurance claims (Tail Coverage) shall be unlimited. If any work is performed airside, the Provider's coverage must be increased to $5,000,000 in liability coverage.

18.2.2. Automobile Liability Insurance shall be maintained by Provider 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: $1,000,000 Combined Single Limit

18.2.3. Worker's Compensation and Employers Liability Insurance shall be maintained by Provider during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

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18.2.4. Provider must use Authority's Certificate of Insurance attached as Schedule “C”, 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 Provider's insurance representatives and must be submitted for Authority's review as to acceptability. If any insurance provided under this Agreement expires prior to the completion of the Work, renewal Certificates of Insurance on an acceptable form must be furnished to Authority's Risk Manager at least thirty (30) days prior to the date of expiration. Copies of the renewal policies shall also be furnished to the Risk Manager if requested by Authority.

18.2.5. If Provider does not maintain the insurance coverages required by this Agreement, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Provider for such coverages purchased. Authority shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

19.0 DUTIES AND OBLIGATIONS IMPOSED ON THE PROVIDER

The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

20.0 NOTICE REGARDING PUBLIC ENTITY CRIMES

Section 287.133(3)(a) (1995) requires the Authority to notify Bidder/Lessee/Tenant of the provisions of Section 287.133(2)(a) F.S.
Section 287.133(2)(a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

A. Contracting to provide goods or services to a public entity.

B. Submitting a bid on a contract for construction or repair of a public building or public work.

C. Submitting bids on leases of real property to a public entity.

D. Being awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of $35,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

21.0 OWNERSHIP AND TRANSFER OF DOCUMENTS

All documents relating to the services specifically prepared or developed by the Provider under this Agreement shall be the property of the Provider, until the Provider has been paid for performing the services and work required to produce such documents.

Upon completion, suspension, or termination of this Agreement, all of the above documents, to the extent requested by the Authority, shall be delivered to the Authority or to any subsequent Provider within thirty (30) calendar days.

The Provider, at its expense, may make and retain copies of all documents delivered to the Authority for reference and internal use. Any subsequent use of the documents and materials listed above shall be subject to the Authority's prior review and approval.
22.0 **MAINTENANCE OF RECORDS**

The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Provider for a minimum of five (5) years from the date of termination of this Agreement, or for such period as required by law.

The Authority and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Authority deems necessary during the period of this Agreement, and during the period as set forth in the paragraph above; provided, however, such activity shall be conducted only during normal business hours of the Provider and at the expense of the Authority.

23.0 **NO THIRD PARTY BENEFICIARIES**

Nothing contained herein shall create any relationship, contractual or otherwise with, or any rights in favor of, any third party.

24.0 **APPLICABLE LAW**

This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement shall be brought either in the Florida state courts in Lee County, Florida, or in the United States Federal District Court for the Middle District of Florida, Fort Myers Division.
prevailing party in any such suit or action shall be entitled to recover from the other party their reasonable attorneys' fees and court costs.

25.0 PROHIBITED INTERESTS

No member, officer or employee of the Port Authority or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

26.0 LOBBYING CERTIFICATION

The Port Authority agrees that no Federal appropriated funds have been paid or will be paid by or on behalf of the Port Authority, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Port Authority to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Port Authority shall require that the language of this section be included in this award document and any award document for all subawards at all tiers (including
subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

27.0 Covenants Against Discrimination

27.1 DBE Policy. It is the policy of the Department of Transportation (the "DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Provider agrees to ensure that DBE's as defined in 49 CFR Part 23 and Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Provider shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

27.2 Prompt Payment Requirements. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, therefore, the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Provider agrees to pay each subconsultant under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Provider receives from Authority. Provider agrees further to return any retainage payments to each subconsultant within forty-five (45) days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE subconsultants.
27.3 **Incorporation of Provisions.** Provider shall include the provisions of paragraphs 27.1 through 27.2 in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Provider shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Provider may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Provider may request the United States to enter into such litigation to protect the interests of the United States.

### 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 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.

29.0 **GENERAL CIVIL RIGHTS CLAUSE**

The Contractor agrees to comply with pertinent statute, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or 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.

30.0 **E-VERIFY**

Provider agrees that it will enroll and participate in the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program. The Provider further agrees to provide the Authority with proof of such enrollment within thirty (30) days of the date of this Agreement. Once enrolled, Provider agrees to use the E-Verify Program to confirm the employment eligibility of:

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 under the Agreement.

Provider further agrees that it will require each contractor or subcontractor performing work or providing services under this Agreement to enroll in and use the U.S. Department of Homeland Security's E-Verify Program for Employment Verification to

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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 Articles, Sections, Exhibits, and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits and Attachments.

32.0 NOTICES AND ADDRESS

32.1 All notices required and/or made pursuant to this Agreement to be given by either party to the other shall be in writing and shall be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Attention: Airport Executive Director
32.2 **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.

33.0 **TERMINATION OR SUSPENSION**

33.1. Provider shall be considered in material default of this Agreement and such default will be considered cause for Authority to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under any Task Authorization, or (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 Provider, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. Authority may so terminate this Agreement, in whole or in part, by giving Provider seven (7) calendar days written notice.

33.2. If, after notice of termination of this Agreement, it is determined for any reason that Provider was not in default, or that its default was excusable, or that Authority was not entitled to the remedies against Provider provided herein, then Provider's remedies against Authority shall be the same as and limited to those afforded Provider under paragraph 33.3. below.

33.3. Authority shall have the right to terminate this Agreement, in whole or in part, without cause upon thirty (30) calendar days written notice to Provider. In the event
of such termination for convenience, Provider’s recovery against Authority shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Provider that are directly attributable to the termination, but Provider shall not be entitled to any other or further recovery against Authority, including, but not limited to, anticipated fees or profits on work not required to be performed.

33.4. Upon termination, Provider shall deliver to Authority all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement.

33.5. Authority shall have the power to suspend all or any portions of the services to be provided by Provider hereunder upon giving Provider 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, Provider’s sole and exclusive remedy shall be an extension of time to its schedule.

34.0 **TERMINATION UNDER SECTION 287.135, F.S.**

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if Consultant is found to have submitted a false certification under Section 287.135(5), F.S. (2016), 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.
35.0 **WAIVER OF BREACH**

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

36.0 **ENTIRE AGREEMENT**

This Agreement, including the referenced Exhibits and Attachments, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.

37.0 **AMENDMENTS**

The terms and provisions contained in 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) shall take precedence.

38.0 **MODIFICATIONS**

Modifications to the terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Amendment(s) or Supplemental Task Authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Amendment(s) or Supplemental Task Authorization(s), the latest executed Amendment(s) or Supplemental Task Authorization(s) shall take precedence.
39.0 SEVERABILITY

If any word, phrase, sentence, part, subsection, or other portion of this Agreement, or any application thereof, to any person, or circumstances is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not have been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

40.0 ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties in the space provided.

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

ATTEST: LINDA DOGGETT
Clerk of the Circuit Court

By:_________________________
Deputy Clerk

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

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
Signed, Sealed and Delivered in the presence of:

Hailey Spaulding
Witness

SEAL

1800 FUELGUY, LLC d/b/a TANK KLEEN

Signature

By: Joseph B. Young
Printed Name

President
Title

State of Florida
County of Pinellas

Before me, Ryan J. Barre, Notary Public-State of Florida, Commission # GG 225966, My Commission Expires June 07, 2022, day personally appeared , Joseph B. Young, Hailey Spaulding, and Justin Tucker to be the person(s) whose name(s) is/are subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 12 day of November, 2019
EXHIBIT “A”

SCOPE OF SERVICES

Provider must furnish all labor, materials and equipment to clean, filter, polish and remediate fuel tanks in accordance with this Scope of Work.

1. Filtering. Provider will be required to remove free water, moisture, sediment and other contaminants from the fuel through a filter down to 1 micron (nominal). Filter size will be determined based on the type of contaminants. The amount of fuel within each tank shall be turned over (or processed) three to five times as necessary to properly filter out contaminants.

2. Cleaning. Provider must use suction and discharge hoses to create a low through the tanks that are being cleaned. During the suction process, the suction wand must be manipulated around the tank in order to reach as much area of the tank as possible.

3. Sampling. Provider must take fuel samples from the tank when the polishing is complete and send to a third party independent lab for testing. One sample from the bottom of the tank is required from tanks that are 5,999 gallons or less. Two samples, one from the center and one from the bottom of the tank, are required for tanks that are 6,000 gallons or greater. All results and reports must be forwarded to the Authority on the same day of receipt.

3.1. Lab analyses must be provided by a third party that conforms to ASTM D975 and AHCA standards including:
   - 3.1.1 API gravity;
   - 3.1.2 Cetane index;
   - 3.1.3 Corrosion copper strip;
   - 3.1.4 Dissolve water by Karl Fischer titration determination;
   - 3.1.5 Distillation;
   - 3.1.6 90% recovery;
   - 3.1.7 Flash point;
   - 3.1.8 Microbial growth;
   - 3.1.9 Sulfur content by Fluorescence;
   - 3.1.10 Visual appearance; and
   - 3.1.11 Water & sediment.

4. Polishing. Provider must be responsible for polishing tanks to the satisfaction of the Authority.

5. Safety. Provider must follow industry standards ANSI/API and ensure safe operation of all equipment at all times.

Provider must comply with all federal, state and local laws and regulations regarding the safe handling and disposal of petroleum products and/or contaminated waste water.
6. Access to Site: Provider’s employees will be permitted unrestricted access to all areas of the site needed to perform scope of work.

7. Provider must perform all services in accordance with this scope of work. No changes in scope or pricing that vary from the Provider’s bid will be permitted unless authorized in writing by the Authority. All invoices, reports and other written documents prepared by Provider must contain the Purchase Order number and Authority SPCC plan identifier number.
## EXHIBIT “B”

### COMPENSATION SCHEDULE

<table>
<thead>
<tr>
<th>SPCC Plan Identifier</th>
<th>Location</th>
<th>Category</th>
<th>Type</th>
<th>Contents</th>
<th>Capacity (gallons)</th>
<th>Construction</th>
<th>Total Price Per Tank</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Vehicle Maintenance</td>
<td>Portable Generator</td>
<td>AST</td>
<td>Diesel</td>
<td>160</td>
<td>Single-walled HDPE</td>
<td>$490</td>
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<td>7</td>
<td>Grounds Maintenance</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>6,000</td>
<td>Double-walled steel</td>
<td>$1,750</td>
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<tr>
<td>8</td>
<td>Lift Station</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td>$490</td>
</tr>
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<td>9</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>1,000</td>
<td>Single-walled steel with concrete outer wall</td>
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<td>10</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>Generator Day Tank</td>
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<td>85</td>
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<td>Diesel</td>
<td>1,000</td>
<td>Single-walled steel with concrete outer wall</td>
<td>$750</td>
</tr>
<tr>
<td>11a</td>
<td>Electrical Vault</td>
<td>Fixed Bulk Storage Container</td>
<td>Generator Day Tank</td>
<td>Diesel</td>
<td>85</td>
<td>Single-walled steel</td>
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<td>Fixed Bulk Storage Container</td>
<td>UST</td>
<td>Diesel</td>
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<td>Concourse B</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td>$490</td>
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<tr>
<td>14</td>
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<td>Fixed Bulk Storage Container</td>
<td>UST</td>
<td>Diesel</td>
<td>4,000</td>
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<td>16</td>
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<td>UST</td>
<td>Diesel</td>
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<td></td>
<td>Concourse D</td>
<td>Fixed Bulk Storage Container</td>
<td>AST</td>
<td>Diesel</td>
<td>250</td>
<td>Double-walled steel</td>
<td>$490</td>
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<td>17</td>
<td>Parking Garage</td>
<td>Fixed Bulk Storage Container</td>
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<td>42</td>
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<td>Equip. reservoir for ground power unit</td>
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</tr>
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<td>Equip. reservoir for mobile pump</td>
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<td>100⁴</td>
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<td>44</td>
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<td>Equip. reservoir for mobile pump</td>
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<td>100⁴</td>
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<td>Equip. reservoir for mobile pump</td>
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<td>46</td>
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<td>155</td>
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<td>AST</td>
<td>Diesel</td>
<td>155</td>
<td>Single-walled Steel</td>
<td>$490</td>
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</tbody>
</table>

¹ SPCC Plan Identifier is the name of the bulk storage container, mobile/portable bulk storage container areas, or oil-filled equipment and the associated piping.

² The numbers of drums and aggregate capacities for drum storage areas are representative of what is typically present and may vary.

³ Underground Storage Tanks (USTs) are subject to the United States EPA regulations for USTs and therefore exempt from SPCC regulations.

⁴ The pump manufacturer indicated that the storage capacity for this pump type ranges from 70-100 gallons.
EXHIBIT "C"
CERTIFICATE OF INSURANCE

In consideration of the premiums charged on the insurance policies shown in this certificate, this certificate of insurance is issued to the certificate holder shown below. This certificate does not amend, extend or alter the coverage afforded by the policies listed below except as shown below:

Name and Address of Agency

<table>
<thead>
<tr>
<th>COMPANY AFFORDING COVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPANY A</td>
</tr>
<tr>
<td>COMPANY B</td>
</tr>
</tbody>
</table>

Name and Address of Insured

<table>
<thead>
<tr>
<th>COMPANY C</th>
<th>COMPANY D</th>
<th>COMPANY E</th>
</tr>
</thead>
</table>

This is to verify that the insurance policies listed below have been issued to the insured and are in force at this time. It is agreed that none of these policies will be cancel or changed, except in the application of the aggregate liability limits provisions, so as to affect the insurance described by this certificate until after 30 days written notice of such cancellation or change has been delivered to the certificate holder at this address shown below. It is also agreed that 30 days written notice by the insurance companies listed above of their intent not to renew their policies listed below for the same coverage provided in this certificate will be given to the certificate holder at their address shown below. The policies shown in this certificate are primary to any insurance carried by the certificate holder.

<table>
<thead>
<tr>
<th>Company Letter</th>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Effective Date (mm/dd/yy)</th>
<th>Policy Expiration Date (mm/dd/yy)</th>
<th>ALL LIMITS IN THOUSANDS</th>
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<tr>
<td></td>
<td>GENERAL LIABILITY</td>
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<tr>
<td></td>
<td>☐ Commercial General Liability</td>
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<td></td>
<td>☐ Claims Made</td>
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<td></td>
<td>☐ Owners &amp; Contractors</td>
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<td></td>
<td>☐ X.C.U. Coverage</td>
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<td>☐ Broad Form Property Damage</td>
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<td></td>
<td>☐ Independent Contractors</td>
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<td>AUTOMOBILE LIABILITY</td>
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<td></td>
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<td>☐ Non-Owned Autos</td>
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<td>EXCESS LIABILITY</td>
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<td>☐ Umbrella Form</td>
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<td></td>
<td>☐ Contractual Liability Coverage</td>
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</tbody>
</table>

Description of Contract:
- The Certificate Holder has been named as an additional insured as respects the General, Automobile, and Excess Liability Policies described here.
- The General, Automobile and Excess Liability Policies described provide the severability of interest (cross liability) provision applicable to the named insured and the Certificate Holder.
☐ Copy of the agent's license, or other proof of representation, with each insurance company named above must be attached to this certificate.

<table>
<thead>
<tr>
<th>Lee County Port Authority</th>
<th>Name and Address of Certificate Holder</th>
</tr>
</thead>
<tbody>
<tr>
<td>11000 Terminal Access Road</td>
<td>Date Issued: ______________________</td>
</tr>
</tbody>
</table>

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

SPECIFIC PROJECT/LOCATION/VEHICLES/SPECIAL CONDITIONS:
The Certificate Holder (CH), requires the use of its Certificate of Insurance as evidence that the insurance requirements of the agreement have been complied with and will continue to be complied with as long as the agreement is in force. CH must rely on this certificate as proof of compliance with the insurance requirements agreed upon. The CH must be advised of cancellation or nonrenewal of the insurance coverage required or reduction in the coverage provided in compliance with the agreement as shown in the Certificate of Insurance. Thirty-day written notice of cancellation, nonrenewal, or reduction in coverage must be provided to the CH so that it can take proper action to protect itself.

Many Certificates of Insurance are received by the CH and many contain wording to the effect that the certificate is issued as a matter of information only and confers no rights upon the certificate holder. A common example of this unacceptable language is: should any of the above-described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the named holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

The CH must have the right of notice of cancellation, nonrenewal, and reduction of coverage, as this is part of the insurance requirements of the agreement entered into and to be relied upon by the CH as evidenced through its Certificate of Insurance.

The requirement that the authorized representative signing the Certificate of Insurance attach his agent's license with the insurance company or companies, or other acknowledgment by the insurance company or companies shown in the certificate, is to show proof to the CH that the person signing the certificate is legally authorized by the insurance company to so obligate them, as referred to in the certificate.

The CH must have positive evidence in the form of its Certificate of Insurance that the insurance requirements of the agreement entered into have been met and will continue to be met, without interruption, during the term of the agreement entered into unless thirty days written notice is given to it.

No activity shall begin until the CH's properly executed Insurance Certificate is received. Your cooperation in providing the CH with acceptable evidence of insurance requirements compliance, as agreed to in the agreement, will prevent confusion and delay in allowing the subject matter of this agreement to be accomplished.

The acceptance of delivery to the CH of any Certificate of Insurance required in any contract does not constitute agreement by the CH that the insurance requirements in the contract have been met or that the insurance policies shown in the certificate are in compliance with the contract requirements.

SEVERABILITY OF INTERESTS PROVISION

With respect to claims involving any insured at interest hereunder, each such interest shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured. This agreement, however, shall not operate to increase the limits of the Insurance Company's liability.
1. **REQUESTED MOTION/PURPOSE:** Request Board award RFB 19-35MLW for the Purchase of Diesel and Unleaded Fuel for the Lee County Port Authority to Palmdale Oil Company, Inc., the lowest, most responsive, responsible bidder and authorize the Chair to execute the attached Service Provider Agreement on behalf of the Board.

2. **FUNDING SOURCE:** General Airport Operating Revenues collected during the normal operation of RSW & FMY, Account WJ5100041200.505210 Maintenance Resources.

3. **TERM:** Initial term of three (3) years with option for one (1) additional two (2) year term.

4. **WHAT ACTION ACCOMPLISHES:** Establishes a service provider agreement for the purchase of diesel and unleaded fuel for an initial three-year term.

5. **CATEGORY:** 11. Consent Agenda

6. **ASMC MEETING DATE:** 12/17/2019

7. **BoPC MEETING DATE:** 1/16/2020

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

9. **REQUESTOR OF INFORMATION:**
   - (ALL REQUESTS)
   - NAME: Gary Duncan
   - DIV.: Aviation

10. **BACKGROUND:**
   
   On October 18, 2019, Lee County Port Authority advertised RFB 19-35MLW Purchase of Diesel and Unleaded Fuel for the Lee County Port Authority. The RFB was advertised in The News-Press, LCPA website, various aviation-related periodicals including ACI-NA, Florida Airports Council (FAC), Airport Minority Advisory Council (AMAC), and Public Purchase, a service that promotes government bid notifications. Sixty-three (63) vendors were notified of the “RFB” and twenty-four (24) companies requested/received the bid package. One (1) response was received by the November 15, 2019 deadline.

   The Palmdale Oil Company, Inc. bid reflects their tank wagon delivered mark-up cost per gallon of $0.1149 for unleaded fuel, $0.1249 per gallon for on-road diesel fuel, and $0.1339 per gallon for off-road diesel fuel. These prices represent the vendor’s mark-up amount, excluding tax, above their base price per gallon costs. Annual expenditures under this contract are estimated to be approximately $600,000 for all Port Authority operations, subject to fuel market price fluctuations.

   If approved, the service provider agreement will have an initial term of three (3) years with an option for up one (1)

11. **RECOMMENDED APPROVAL**

<table>
<thead>
<tr>
<th>DEPUTY EXEC DIRECTOR</th>
<th>COMMUNICATIONS AND MARKETING</th>
<th>OTHER</th>
<th>FINANCE</th>
<th>PORT ATTORNEY</th>
<th>INTERIM EXECUTIVE DIRECTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gary E. Duncan</td>
<td>Victoria B. Moreland</td>
<td>N/A</td>
<td>Brian W. McGonagle</td>
<td>Gregory S. Hagen</td>
<td>Benjamin R. Siegel</td>
</tr>
</tbody>
</table>

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)

additional two (2) year term at the discretion of the Authority.

Attachments:
1. Bidders Certification
2. Master RFB Solicitation
3. Palmdale Oil Company, Inc. Service Provider Agreement
FORM 1: BIDDER'S CERTIFICATION
Note: This form must be submitted with the bidder's bid submittal

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

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

<table>
<thead>
<tr>
<th>Addendum #</th>
<th>Date</th>
<th>Addendum #</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>11/5/19</td>
<td>2</td>
<td>11/7/19</td>
</tr>
</tbody>
</table>

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

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

I further certify, under oath, that this bid is made without prior understanding, agreement, connection, discussion, or collusion with any 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.

Palmtdale Oil Company Inc.

NAME OF BUSINESS

911 N. 2nd Street

MAILING ADDRESS

Pt. Pierce Pk 34950

CITY, STATE & ZIP CODE

772 461 2310 / 772 579 0843

TELEPHONE NUMBER / FAX NUMBER

lach@palmtdaleoil.com

EMAIL ADDRESS

Palm Beach

State of: Florida

COUNTY OF: Palm Beach

This foregoing instrument was acknowledged before me this November 2019, by Lachlan C. Chatham, who is personally known to me or produced ___________________________ as identification.

Signature of Notary

Sarasota County

Serial/Commission No. 5G 284 694
FORM 2: OFFICIAL BID FORM

BID NO. RFB 19-35MLW  BIDDER'S NAME: Palmdale Oil Company Inc.

RECEIVING DATE: FRIDAY, NOVEMBER 08, 2019

PRIOR TO 2:00 P.M. LOCAL TIME

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

The Undersigned, hereinafter called "BIDDER," having become familiar with the local conditions, nature, and extent of the work, and having examined carefully the bid documents, including but not limited to, Part B, Special Instructions and Requirements, Part D, Project Information Specifications, and having fulfilled bid requirements herein, Bidder agrees to furnish all labor, materials, equipment, and other items, facilities and services for the supply and delivery of:

** DIESEL AND UNLEADED FUEL FOR THE LEE COUNTY PORT AUTHORITY **

in full accordance with this Request for Bid and all other documents related thereto on file in the Purchasing Office and, if awarded the contract, to perform said work for the pricing indicated in the following bid schedule:

**Fuel by Tank Wagon Delivery**

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Product Type</th>
<th>Unit of Measure</th>
<th>Base Price (Per Gallon)</th>
<th>Vendor Markup Amount Per Gallon (Excluding Tax)</th>
<th>Total Cost Per Gallon (Column A+B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNLEADED Gasoline E10 Delivered via Tank Wagon</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unleaded 87 Octane AKI</td>
<td>Per Gallon</td>
<td>1.4692</td>
<td>.1149</td>
<td>1.7841</td>
</tr>
<tr>
<td>Diesel Fuel Delivered via Tank Wagon</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>#2 Premium Ultra Low Sulfur Diesel, On Road (Non-Dyed)</td>
<td>Per Gallon</td>
<td>1.913</td>
<td>.1249</td>
<td>2.0442</td>
</tr>
<tr>
<td>3</td>
<td>#2 High Sulfur Diesel, Off Road (Dyed)</td>
<td>Per Gallon</td>
<td>1.9107</td>
<td>.1339</td>
<td>2.0446</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total Cost Per Gallon</td>
<td>$ 5.8729</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

"The "Base" price per gallon will be filled in by the vendor and will be based upon the average Tampa, Florida price as reported in the "Oil Price Information Service" ("OPIS") on October 31, 2019 at 10 a.m."
FORM 2 - OFFICIAL BID FORM - (Continued)

BID NO. RFB 19-35MLW

BIDDER'S NAME: Palmdale Oil Company Inc.

All required licenses are attached?

Yes

Bidders base location address to confirm bidder has a (4) four-hour response time.

2958 Fowler St. Ft. Myers FL 33901

Number of tank wagons owned and the gallon size of each.

Fleet over 100 trucks, Typical size is 4000gal.

Capacity in gallons of fixed fuel storage tanks at base location

90,000 gallons

Is your supply point equipped with an emergency generator?

Yes

Is your Emergency Spill Response Plan attached?

Yes

Proof of Fuel Supply contracts (Form 7)

Yes
FORM 3: LOBBYING AFFIDAVIT

STATE OF: Florida

COUNTY OF: Palm Beach

Lachlan Chestham, 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 Pelmadale Oil Company Inc., (Bidder), maker of the attached bid and that neither the Bidder nor its agents have lobbied to obtain an award of the Agreement required by this Bid from the Lee County Board of Port Commissioners, members of the Airports Special Management Committee, or employees of the Lee County Port Authority, individually or collectively, regarding this Authority Bids. The prospective Bidder further states that it has complied with the federal regulations concerning lobbying activities contained in 31 U.S.C. 1352 and 49 CFR Part 20 and the Lee County Lobbying Ordinance, No. 03-14.

APPANT

The foregoing instrument was acknowledged before me on Nov 7, 2019, by Lachlan Chestham (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 (Corporation or partnership, if applicable). He/She is personally known to me or has produced as identification.

Signature of person taking acknowledgment

Denise Custer

Name typed, printed, or stamped

FL Notary

Signature of Notary (Serial or Commission No.)
NOTE: THIS FORM IS REQUIRED FROM ALL BIDDERS

FORM 4: PUBLIC ENTITY CRIMES FORM

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

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

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

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

BIDDER'S NAME: Palmdale Oil Company Inc.
FORM 5: BIDDER'S SCRUTINIZED COMPANIES CERTIFICATION

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

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

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

[Signature]

Notary Public
State of Florida
County of Palm Beach

Sworn to and subscribed before me this 7th day of November, 2019, by Lachlan Cheatham who produced the following as identification ___________________________ (Type of identification) or is personally known to me. My

Commission Expires 2-19-2023

[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:

**Palm Ole Oil Company**

2558 Fowler St.

Ft. Myers, Fl 33901

(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 = 10

Projects completed in Lee County over the last consecutive three (3) years:

- City of Ft. Myers
  - Began in 20__ Completed in 20__
- Lee County School Board
  - Began in 20__ Completed in 20__
- Lee County
  - Began in 20__ Completed in 20__
- Lee County Port Authority
  - Began in 20__ Completed in 20__

Current Lee County location of equipment, materials and personnel that will be used full time on this project:

2558 Fowler St.

Ft. Myers, Fl 33901

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

Please identify the firm name and physical address below:

________________________________________________________

________________________________________________________

________________________________________________________
□ Not a Local Vendor as defined by Lee County Ordinance 00-10, as amended by Lee County Ordinance Nos. 08-26 and 17-16.

Lachlan Creelker
Printed Name
President
Title
Signature

Notary Public – State of Florida
County of Palm Beach
Sworn to and subscribed before me this 7th day of Nov., 2019
Personally known or produced identification
My Commission Expires 2-19-2023
(Type of identification)

Printed, typed or stamped commissioned name of Notary Public

[Remainder of page intentionally left blank]
FORM 7: FUEL SUPPLY CONTRACTS

Marathon Petroleum
COMPANY

Andrew Rohrig
CONTACT NAME

ADDRESS

CITY, STATE, ZIP CODE
813 205 5174
TELEPHONE

FAX NUMBER
atrhrig@marathonpetroleum.com
E-MAIL ADDRESS

Citgo
COMPANY

John Kiernan
CONTACT NAME

ADDRESS

CITY, STATE, ZIP CODE
409 481 2419
TELEPHONE

FAX NUMBER
JKIERNAN@citgo.com
E-MAIL ADDRESS
FORM 8: PROFESSIONAL REFERENCE SURVEY

RFB 19-35 MLW
PURCHASE OF DIESEL AND UNLEADED FUEL
FOR THE LEE COUNTY PORT AUTHORITY
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

Section 1

<table>
<thead>
<tr>
<th>Name &amp; Title:</th>
<th>Kari Hansen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company:</td>
<td>South Florida Water Management</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:Atansen@sfwmnd.gov">Atansen@sfwmnd.gov</a></td>
</tr>
<tr>
<td>Phone:</td>
<td>561 692 6757</td>
</tr>
</tbody>
</table>

Please return completed form to:

Procurement Agent: Megan Wilson
Due Date: 11/15/19
Total # Pages: 1
Phone: 239-500-4558
Email: mlwilson@FlyLCPA.com

Section 2

Bidder Name: Palm Dale Oil Company Inc.

Client's Project Name: 120000000785

You or your company have been given as a reference on the project identified above. Please provide responses in section 3:

Section 3

1. How long have you done business with this company?

2. What type(s) of business have you done with this company?

3. What is your overall impression of this company’s qualifications?

<table>
<thead>
<tr>
<th>E (Excellent)</th>
<th>G (Good)</th>
<th>S (Satisfactory)</th>
<th>NS (Not Satisfactory)</th>
</tr>
</thead>
<tbody>
<tr>
<td>E</td>
<td>G</td>
<td>S</td>
<td>NS</td>
</tr>
<tr>
<td>E</td>
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</tr>
<tr>
<td>E</td>
<td>G</td>
<td>S</td>
<td>NS</td>
</tr>
<tr>
<td>YES</td>
<td>NO</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. How would you rate the Company’s overall service quality?

5. How would you rate their supervisors and staffing?

6. How would you rate their communication?

7. How would you rate their preventative maintenance program?

8. How would you rate their responsiveness?

9. How would you rate their invoicing and reporting process?

10. WOULD YOU USE THIS COMPANY AGAIN?

11. Do you have any additional comments regarding the quality of the services his company has furnished and performed at your facility?
FORM 8: PROFESSIONAL REFERENCE SURVEY
RFB 19-35 MLW
PURCHASE OF DIESEL AND UNLEaded FUEL
FOR THE LEE COUNTY PORT AUTHORITY
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

Section 1

Name & Title: Debbie Reeves
Company: Pasco County Schools
Email: dreesesegovcsok12plus
Phone: 813 794 2219

Please return completed form to:
Procurement Agent: Megan Wilson
Due Date: 11/15/19
Total # Pages: 1
Phone: 239-590-4558
Email: mlwilson@FlyLCPA.com

Section 2

Bidder Name: Palmistry Oil Company Inc.
Client's Project Name: 16-021-55

You or your company have been given as a reference on the project identified above. Please provide responses in section 3:

Section 3

1. How long have you done business with this company?

2. What type(s) of business have you done with this company?

3. What is your overall impression of this company's qualifications?

<table>
<thead>
<tr>
<th>E (Excellent)</th>
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<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

4. How would you rate the Company's overall service quality?

5. How would you rate their supervisors and staffing?

6. How would you rate their communication?

7. How would you rate their preventative maintenance program?

8. How would you rate their responsiveness?

9. How would you rate their invoicing and reporting process?

10. WOULD YOU USE THIS COMPANY AGAIN?

    YES | NO

11. Do you have any additional comments regarding the quality of the services his company has furnished and performed at your facility?

Page 31 of 34
FORM 8: PROFESSIONAL REFERENCE SURVEY
RFB 19-35 MLW
PURCHASE OF DIESEL AND UNLEADED FUEL
FOR THE LEE COUNTY PORT AUTHORITY
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

Section 1

<table>
<thead>
<tr>
<th>Client/Reference Respondent Information – Please Print Legibly</th>
<th>Please return completed form to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name &amp; Title: <strong>Cathy Zickerbese</strong></td>
<td>Procurement Agent: Megan Wilson</td>
</tr>
<tr>
<td>Company: <strong>HART</strong></td>
<td>Due Date: <strong>11/15/19</strong></td>
</tr>
<tr>
<td>Email: <strong><a href="mailto:zickerbese@gohart.org">zickerbese@gohart.org</a></strong></td>
<td>Total # Pages: <strong>1</strong></td>
</tr>
<tr>
<td>Phone: <strong>813 554 4353</strong></td>
<td>Phone: <strong>239-500-4558</strong></td>
</tr>
<tr>
<td>Email: <strong><a href="mailto:mlwilson@FlyLCPA.com">mlwilson@FlyLCPA.com</a></strong></td>
<td></td>
</tr>
</tbody>
</table>

Section 2

<table>
<thead>
<tr>
<th>Bidder Name: <strong>Palmdale Oil Company Inc</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Client’s Project Name: <strong>RFB-36203</strong></td>
</tr>
</tbody>
</table>

You or your company have been given as a reference on the project identified above. Please provide responses in section 3:

Section 3

1. How long have you done business with this company?

2. What type(s) of business have you done with this company?

3. What is your overall impression of this company’s qualifications?

<table>
<thead>
<tr>
<th>E (Excellent)</th>
<th>G (Good)</th>
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<td>NS</td>
</tr>
<tr>
<td>E</td>
<td>G</td>
<td>S</td>
<td>NS</td>
</tr>
</tbody>
</table>

4. How would you rate the Company’s overall service quality?

5. How would you rate their supervisors and staffing?

6. How would you rate their communication?

7. How would you rate their preventative maintenance program?

8. How would you rate their responsiveness?

9. How would you rate their invoicing and reporting process?

10. WOULD YOU USE THIS COMPANY AGAIN?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

11. Do you have any additional comments regarding the quality of the services his company has furnished and performed at your facility?
1. How long have you done business with this company?  
   Eight (8) years

2. What type(s) of business have you done with this company?  
   Bulk Fluids, diesel and UNL gasoline

3. What is your overall impression of this company’s qualifications?  
   Very good! Very responsive to delivery schedules and adherence to multi-property contract(s).

4. How would you rate the Company’s overall service quality?  
   E = Excellent, G = Good, S = Satisfactory, NS = Not Satisfactory

5. How would you rate their supervisors and staffing?  

6. How would you rate their communication?  

7. How would you rate their preventative maintenance program?  

8. How would you rate their responsiveness?  

9. How would you rate their invoicing and reporting process?  

10. WOULD YOU USE THIS COMPANY AGAIN?  

11. Do you have any additional comments regarding the quality of the services his company has furnished and performed at your facility?
Entity Name: PALMDALE OIL COMPANY, INC.

Current Principal Place of Business:
911 NORTH 2ND STREET
FT PIERCE, FL 34950

Current Mailing Address:
911 NORTH 2ND STREET
FT PIERCE, FL 34950 US

FEI Number: 59-2358666

Name and Address of Current Registered Agent:
BEER, JERALD SESQ
515 NORTH FLAGLER DRIVE
SUITE 2000
WEST PALM BEACH, FL 33401 US

Certificate of Status Desired: No

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE:

Electronic Signature of Registered Agent

Officer/Director Detail:

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
<th>Address</th>
<th>City-State-Zip:</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRESIDENT</td>
<td>CHEATHAM, LACHLAN L</td>
<td>911 N. 2ND STREET</td>
<td>FT PIERCE FL 34950</td>
</tr>
<tr>
<td>VP</td>
<td>CHEATHAM, KENDALL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SECRETARY</td>
<td>DOREMUS, MALLORY</td>
<td>911 N. 2ND STREET</td>
<td>FT PIERCE FL 34950</td>
</tr>
<tr>
<td>TREASURER</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 601, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: BILLY CHAVERS

Date: 03/07/2019
Dear Taxpayer:

Attached below is your Fuel/Pollutants tax license issued pursuant to Chapter 206 of the Florida Statutes. This authorizes the license holder to engage in the fuel/pollutants activity classifications listed on the license. The license must be displayed conspicuously at the principal place of business. The license is only valid for the person/business named and cannot be transferred or assigned to another entity or person. Whenever the license is held by a corporation or business entity, there can be no change of stock, ownership, or equity without prior approval by the Department. The license is only valid through the expiration date listed. If no expiration date is listed, the license is valid until notified by the Department.

License Number: 511333
FEIN Number: 59-2358665

Expiration Date: 12/31/2018
License Activity: Wholesale Carrier Exporter

License is Not Transferable–It Must be Posted in a Conspicuous Place
This business has complied with the required provisions of Chapter 206, Florida Statutes, and is authorized to engage in fuel activities under the license activity classification listed above. If no expiration date is listed, the license is valid until notified by the Department of Revenue.
Dear Business Owner:

Your 2019-2020 Lee County Local Business Tax Receipt is attached below for account number 0100767.

If there is a change in one of the following, refer to the instructions on the back of this receipt.
- Business name
- Ownership
- Physical location
- Business closed

This is not a bill. Detach the bottom portion and display in a public location.

I hope you have a successful year.

Sincerely,

[Signature]

Lee County Tax Collector

---

2019 - 2020
LEE COUNTY LOCAL BUSINESS TAX RECEIPT

Account Number: 0100767

Location:
2961 ROYAL PALM AVE
FT MYERS FL 33901

PALMDALE OIL CO INC
PALMDALE OIL CO INC
2958 FOWLER ST
FT MYERS FL 33901

Account Expires: September 30, 2020

May engage in the business of:
OIL OR FUEL DEALER - WHOLESALE

THIS LOCAL BUSINESS TAX RECEIPT IS NON REGULATORY

Payment Information:
PAID 590653-31-1 09/16/2019 09:50 AM
$50.00
GUARANTEED SUPPLY AGREEMENT

This is a Guaranteed Supply Agreement dated November 19, 2018, between Marathon Petroleum Company LP ("MPC"), a Delaware limited partnership with offices at 539 South Main Street, Findlay, Ohio 45840 and Palmdale Oil Company, Inc ("Palmdale Oil") with offices at 810 N. Congress Ave, Riviera Beach, FL 33404.

1. Definitions. "Products" shall mean gasoline, gasohol and distillates of all grades and types as are generally offered to MPC's Wholesale Reseller customers at a Terminal from time to time. "Terminal," "10-Day Volume," and "Monthly Volume," shall refer to the MPC terminals and the associated quantities (in gallons) listed in the table in Section 3, if applicable. "Month" (capitalized or not) shall mean a calendar month. "10-Day Period" shall mean 10 calendar days in a Month, beginning on the first day of the Month. The last 10-Day Period in a Month must end on the last calendar day of the Month and can be shorter or longer than 10 days depending on the amount of days in the Month.

2. Term. The initial term of this Agreement is from December 1, 2018 to November 30, 2019, inclusive. This Agreement shall automatically renew for up to two successive one-year renewal term(s) unless either party gives written notice of non-renewal at least 60 days prior to the end of the initial term or the subsequent one-year renewal term.

3. Quantity. (A) During each Month, Palmdale Oil shall purchase at least 90% of the Monthly Volumes of each Product at the associated Terminal as shown in the table below. (B) During each 10-Day Period, Palmdale Oil shall purchase the 10-Day Volumes of each Product at the associated Terminal as shown in the table below. (1) MPC will not be required to guarantee availability of Product for Palmdale Oil's purchase in amounts greater than 110% of the 10-Day Volumes set forth in the table below. (2) During any 10-Day Period, all Product purchases over 110% of the 10-Day Volumes shall apply toward Palmdale Oil's obligation to purchase the Monthly Volumes. (C) In the event the needs of Palmdale Oil increase beyond the volumes specified in the table below, Palmdale Oil shall notify the MPC Regional Office in writing of the additional volume requested at least 30 days prior to lifting. The MPC Regional Office shall assess Product availability, and if the parties mutually agree, shall amend the volumes in the table set forth below.

<table>
<thead>
<tr>
<th>Terminal</th>
<th>Product</th>
<th>10-Day Volume</th>
<th>Monthly Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fort Lauderdale</td>
<td>Gasohol</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fort Lauderdale</td>
<td>Diesel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fort Lauderdale</td>
<td>90 Rec Gas</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tampa</td>
<td>Gasohol</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tampa</td>
<td>Diesel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tampa</td>
<td>90 Rec Gas</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taft</td>
<td>Gasohol</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taft</td>
<td>Diesel</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. The[redacted] for any given load of Product shall be:

<table>
<thead>
<tr>
<th>Terminal</th>
<th>Product</th>
<th></th>
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<tbody>
<tr>
<td>Fort Lauderdale</td>
<td>Gasohol</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Taft</td>
<td>Diesel</td>
<td></td>
</tr>
</tbody>
</table>

All prices are determined as of the time the lifting ends. Palmdale Oil acknowledges and agrees that MPC may use the Wholesale Reseller Price to manage customer liftings when MPC's Product supply at a Terminal is limited and Palmdale Oil waives the right to claim that this method of pricing is unfair, anti-competitive, tortious, or a breach of contract.

5. Remedies. (A) MPC will, at its sole discretion, invoice Palmdale Oil on a monthly basis an underlifting fee of $0.0300 per gallon not lifted if Palmdale Oil fails to lift at least 90% of the Monthly Volumes of each Product at the associated Terminal as shown in the table in Section 3. Palmdale Oil shall pay MPC within 15 days after receipt of the invoice for any applicable underlifting fee charged by MPC. No failure by MPC to charge for any underlifting fees to which it would be entitled in any given month shall operate as or imply any existing or future waiver of the right to charge such fees, nor shall it, in any way, limit or alter the rights of MPC set forth herein or prevent MPC from

[486626.DOCX]
asserting its rights herein through estoppel or any similar legal theory. (B) MPC may cancel this Agreement upon 15 days' advance written notice if, for any two consecutive months, Palmdale Oil fails to purchase the Monthly Volumes at the associated Terminal as shown in the table in Section 3. (C) If a supply interruption occurs at a Terminal, MPC may request Palmdale Oil, to the extent logistically feasible, to lift Products at another MPC Terminal.

6. General. (A) THE ATTACHED PRODUCT SALES TERMS ARE PART OF THIS AGREEMENT, but the terms herein shall prevail over any conflicting terms in the Product Sales Terms. (B) The fee in Section 5(A) is not a penalty but is a reasonable liquidated damage amount. (C) This Agreement has been executed in two original counterparts. (D) Palmdale Oil has the right to disclose the terms and conditions contained herein with its agents, employees, directors and officers with a need to know, however these terms and conditions are confidential, and any unauthorized disclosure by Palmdale Oil without the express written consent of MPC is a material breach of this Agreement.

Marathon Petroleum Company LP
By: MPC Investment LLC, its General Partner

By: __________________________
Title: Southern Region Manager

Palmdale Oil Company, Inc

By: __________________________
Title: President
UNBRANDED RACK SALES AGREEMENT

It is agreed this 6th day of April 2017 between CITGO Petroleum Corporation, a Delaware corporation, having a place of business at 1293 Eldridge Parkway, Houston, Texas 77077, hereinafter called “CITGO,” and Palmdale Oil Company, a FL corporation, having a principal office and place of business at 911 N 2nd St, Fort Pierce, FL 34950 hereinafter called “Unbranded Marketer”.

WHEREAS, CITGO is in the business of refining and marketing gasoline and diesel fuel, and Unbranded Marketer desires to purchase from CITGO refined petroleum products which may include one or more of the following products: Gasoline, Motor Vehicle Diesel Fuel, Non-Road Diesel Fuel, Heating Oil, Kerosene and/or #1 Diesel Fuel (individually and collectively referred to as the “Products”) for resale on an unbranded basis. CITGO desires to sell such Product(s) to Unbranded Marketer on an unbranded basis.

WHEREAS, nothing herein shall be construed to allow Unbranded Marketer the right to hold out the Products purchased hereunder as CITGO’s product. Nor shall Unbranded Marketer have the right to utilize any of CITGO’s or its affiliate’s trademarks, trade names or trade dress in connection with the Products sold hereunder.

WHEREAS, this Unbranded Rack Sales Agreement (“Agreement”) cancels and supersedes all prior and contemporaneous representations, inducements, agreements, amendments and addendums, commitments and undertakings with respect to the subject matter of this Agreement.

NOW, THEREFORE, CITGO and Unbranded Marketer agree as follows:

1. TERM. This Agreement shall be effective for a one year period beginning on April 10, 2017 and shall continue on a year to year basis until otherwise terminated. Notwithstanding the foregoing, either party may terminate this agreement, without cause, upon providing thirty (30) days written notice.

2. QUANTITIES. Unbranded Marketer shall purchase and lift or accept delivery of quantities of Products as set forth below during the respective monthly periods and CITGO shall sell and deliver the specified quantities of Products as defined in subparagraph 2.c. (“Contract Volume”). Unbranded Marketer hereby acknowledges and agrees that the purchase and ratable lifting of the monthly quantities of Products specified herein by Unbranded Marketer are reasonable, important and of material significance. Unbranded Marketer understands and agrees that any failure by Unbranded Marketer to purchase a minimum of ninety percent (90%) of the monthly quantity of Products listed below during any month on a Ratable Basis shall be a violation of this Agreement. CITGO shall have no obligation at any time to provide more than the Contract Volume listed in subparagraph 2.c. For purposes of this Agreement, the term “Ratable Basis” shall mean weekly unbranded volume that does not change from week to week by more than 10%.
upon CITGO until it has been duly accepted by CITGO as evidenced by the signature of its authorized designee. Commencement of dealing between the parties shall not be deemed a waiver of this requirement. This Agreement shall be governed by the laws of the State of Texas. Unbranded Marketer consents to jurisdiction and venue in the state and federal courts located within Texas.

The parties have executed this Agreement as of the date set forth on the first page of this Agreement.

CITGO PETROLEUM CORPORATION

By: [Signature]

Print Name: Andy Desjarlais

Title: Region Manager Commercial Sales

PALMDALE OIL COMPANY

By: [Signature]

Print Name: Lachlan Cheatham

Title: president
Emergency Response Action Plan

2.1 Notification Procedures.

All spills, regardless of size must be reported to the company’s QI immediately.

All Drivers are required to follow the Spill Response Guideline set forth in this document.

In the event of a fire emergency, the Person in Charge will secure the affected area and immediately notify the local fire department by dialing 911.
In the event of an oil spill, the Person in Charge will ensure that all the proper authorities have been notified. In addition, the Person in Charge, using the materials on hand, will direct available personnel to assist in the deployment of equipment and corrective actions in order to mitigate damage.
In the event of an accident the Person in Charge will notify the local emergency medical service and/or fire department by dialing 911.

At the time of a spill the Driver on site shall perform any necessary action to STOP the continuation of the spill.

Disengage pumping system on truck.
Close all drain valves on tanks.
Immediately contain spill.
Divert spill from contacting the soil.
Drivers may carry the liquid clean up and de-foamer on their truck. Ask your supervisor to provide.

Utilize booms and pads to prevent run off from contacting the soil.
The QI will evaluate the situation to determine, through documentation, if the spill consists of more than 25 liquid gallons. If so the QI will contact the DEP.
Any spill to the water you must notify the NRC and USCG.

Upon evaluation of the Spill if it is determined to be in excess of 25 liquid gallons and beyond the scope of the on-staff PCC contractor, the QI will make arrangements with DEP as well as our contracted Spill Responder.

Preventing a spill is our main goal. Inspect your hose lines and piping daily.

In the event of any spill, mixed product or vehicular accident, the driver is required to immediately contact his/her supervisor. In the event that the immediate supervisor is not available the driver must contact the Qualified Individual (QI) Lach Cheatham directly 561 722 0402. Alternate QI’s are Kendall Cheatham 561 722 6862, Robert Talley 561 722 7110, Mallory Cheatham 561 722 1892, Terry Mills 772 834 4345. Terry Mills is also the Spill Response Manager (SRM).

Once the Supervisor is notified, the Supervisor must contact SRM Terry Mills 772 834 4345 IMMEDIATELY for consultation and direction.
SRM Terry Mills notify QI Lach Cheatham PROMPTLY.
An incident report must be filled out by the direct supervisor and sent to the SRM.
Driver should always take note when filling tanks in containment that the containments drain valve is securely closed.
Driver should always check the level of the product in the tank, prior to filling. All tanks have a 10% ullage of unusable tank space. The driver should determine if the product to be delivered is more than 90% of the capacity of the tank. Due caution should be used in the prevention of an over fill.

When accessible, manual tank gauge reading should be utilized and documented. Reading should be gathered before and after delivery. Customer should verify readings.

When a monitoring system is used, the driver should find out if the reading is current. Some system poll at intervals and may be misleading. Once you have confirmed the current reading you need to account for the 10% ullage. Document your reading before and after filling.

*With respect to vessel fueling:*
The driver of the truck making the vessel delivery is normally the only shore man required for the oil transfer operation and is licensed to serve in the capacity of Person In Charge. On multiple truck deliveries or when special equipment is required, the transfer of the cargo from the truck to the vessel, an additional trained man will be assigned to assist in the transfer, in which case either the driver or the added man may serve as the Person In Charge.

It is the duty of the Person In Charge to carry out the shore-related function of the oil transfer operation following the procedures which have been established by Palmdale Oil Company and approved by the Coast Guard with the objective of eliminating any spillage or oil into navigable waters.

*Note:*
*We do not transfer to any vessel that is unmanned.*
Qualified Individual  Lach Cheatham
561-722-0402

Alternate Qualified  I. Kendall Cheatham
561-722-6268
Malby Cheatham
561-722-1692
Robert Talley
561-722-7140

Alternate Qualified I. Terry Mills
Spill Response Mana 772-834-4345

Facility Response To James Causier
(based on facility loc 772-359-2095
James McInlyre
772-577-8900
Dan Foster
561-436-0738
Bob Almeida
239-229-0830
Jeff Francis
813-454-4245
Jonathan Varney
407-967-9003
TELEPHONE NUMBERS FOR REPORTING POLLUTANT SPILLS

NATIONAL RESPONSE CENTER
(800) 424-8802 (24 HOURS)
(202) 267-2675 (24 HOURS)
** Any discharge to water must be reported immediately to the National Response Center.

U.S. COAST GUARD MARINE SAFETY OFFICE
Sector Miami (305)535-8701 (24 Hrs)/ (305)732-0160 /
Sector Jacksonville (904)564-7513 / (904) 564-7511 ext 12 (24 hrs)
Sector St. Petersburg (813)228-8400 / (727) 824-7506 (24 hrs)
Sector Key West (305) 292-8700 / (305) 292-8727 (24 hrs)
Sector Mobile (251) 441-5720 / (251) 441-6211 (24 hrs)

U.S. COAST GUARD MARINE SAFETY DETACHMENTS
Port Canaveral (321)784-6780 / (321)868-4200 (24 Hrs)
Lake Worth (561)848-8568 / (561) 844-4470 (24 hrs)
Panama City (850) 233-0356 ext 176 / (251) 441-6211 (24 hrs)
Fort Myers (239) 985-0560 / (727) 824-7506 (24 hrs)

STATE WARNING POINT
Florida (800) 320-0519 (24 HRS)
(850) 413-9911 (24 HRS)
Alabama (800) 843-0699 (24 hrs)
(334) 271-7700

DEPARTMENT OF NATURAL RESOURCES
FLORIDA FISH AND WILDLIFE
(888) 404-3922 (24 Hours, In State)

EPA REPORTING (404) 562-8700
(404) 562-9900
DOT PIPELINE & (800) 467-4922
SAFETY ADMINISTRATION

OTHER NUMBERS
Emergency Phone Number
Local Fire 911
Local Poli 911
Local Amb 911

Spill Response Contr Emergency first responder
Cliff Berry (800) 899-Industrial waste hauler
REQUEST FOR BIDS (RFB)

RFB 19-35MLW

FOR

PURCHASE OF DIESEL AND UNLEADED FUEL FOR THE LEE COUNTY PORT AUTHORITY

DATED: 10/22/2019

PURCHASING OFFICE DESIGNATED CONTACT
Megan Wilson, Procurement Agent

TELEPHONE: (239) 590-4558
E-MAIL: mlwilson@FlyLCPA.com

NO PRE-BID MEETING

INQUIRY/CLARIFICATION REQUEST DEADLINE:
Thursday, October 31, 2019. Time 2:00PM., Local Time

BIDS DUE:
Friday, November 8, 2019. Time: 2:00PM., Local Time
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</tr>
<tr>
<td>SEALED BID LABEL</td>
<td>33</td>
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</table>
PART A – GENERAL INFORMATION AND CONDITIONS

1. PUBLIC RECEIVING AND OPENING OF BIDS
Bids shall be opened and read publicly at the time and place specified in this Request for Bids. The Authority reserves the right to extend this date and time at Authority's sole discretion, when deemed to be in the best interest of the Authority. Bidders, their authorized agents and other interested persons are invited to attend the bid opening.

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

All bids submitted must be sealed and marked with the solicitation number and title on the exterior of the package. The submission must contain one (1) original and one (1) identical electronic copy of the bid in PDF format as a single file on a USB flash/travel drive. In case of discrepancy in content between the original hard copy and the USB flash/travel drive, the original hard copy will govern. All bids must be delivered to:

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

Electronically submitted or faxed bids will not be considered.

3. DELAYS CAUSED BY DELIVERY SERVICES
Delivery of sealed bids to the Lee County Port Authority Purchasing Office prior to the time set for the bid opening is solely and strictly the responsibility of the Bidder. The Lee County Port Authority Purchasing Office will not be responsible for delays caused by any delivery services that may be used or for any other reason. Bidders are hereby directed to cause delivery of their bid prior to the bid opening time. The bid delivery deadline will be scrupulously observed.

Bidders are advised that the United States Postal Service and third party express mail services may not deliver your bid in a timely manner. Bidders are cautioned to plan necessary delivery time accordingly.

Any bid received after the deadline for submittal of bids will not be considered.

4. INQUIRIES/CLARIFICATION
Except during a scheduled pre-bid meeting, the Authority will not respond to oral inquiries concerning this RFB. Bidders may submit written or email inquiries regarding this RFB to the Purchasing Office contact indicated on the cover page. The Authority may choose not to respond to inquiries received after the inquiry/clarification deadline indicated.

5. DISTRIBUTION OF INFORMATION, RESULTS AND ADDENDA
The Authority uses Public Purchase to distribute solicitation documents including addenda and results. Interested firms may register to receive this information free of charge by registering at https://www.publicpurchase.com/gems/register/vendor/register or contacting Public Purchase Vendor Support at (801) 932-7000 or accessing the electronic link available from the Authority website www.flylcpa.com/purchasing or by calling the Purchasing Office at (239) 590-4556.
It shall be the responsibility of the Bidder, prior to submitting their bid, to contact the Purchasing Office to determine if addenda to this RFB have been issued and, if issued, acknowledging and incorporating same into their bid. All results concerning this Request for Bids will be posted via Public Purchase or may be obtained by contacting the Purchasing Office.

All addenda shall become part of the contract documents.

6. PRE-BID MEETING
   If a pre-bid meeting is indicated on the cover page of this RFB, it will be held at the location on the date and time specified. The cover page will also note if the pre-bid meeting is Non-Mandatory or Mandatory and if a site visit is planned. 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.

All prospective bidders are encouraged to obtain and review the RFB prior to any 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) days prior to the scheduled pre-bid meeting to allow staff time to research the questions.

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

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

9. 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 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.

10. GENERAL CIVIL RIGHTS
    The successful Bidder agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin,
sex, age, or disability be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision binds the successful Bidder and its subcontractors from the bid solicitation period though the completion of any resulting contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

11. **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 legibly completed in ink or typewritten. Where submitted bids have erasures or corrections, such erasures or corrections must be initialed in ink by the Bidder.

12. **DIRECT PURCHASE**

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

13. **TERMINATION FOR CONVENIENCE**

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

14. **PUBLIC RECORDS AND DISCLOSURE**

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

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

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

15. **TAX EXEMPT**

The Authority is generally a tax-exempt entity, subject to the provisions of the Florida Statutes regarding sales tax. The successful Bidder shall be responsible for complying with the Florida sales and use tax law as it may apply. The amount(s) of compensation set forth in the contract, or in any change orders authorized pursuant to this contract, shall be understood and agreed to include any and all Florida sales and use tax payment obligations required by Florida law of the successful Bidder and all subcontractors or materials suppliers engaged by the successful Bidder.
16. **EXAMINATION OF BID SOLICITATION INFORMATION**  
Each Bidder is required, before submitting a bid, to be thoroughly familiar with each and every requirement contained within the solicitation documents, including any addenda. No additional allowances will be made because of lack of knowledge of the requirements contained herein. All Bidders must carefully review the bid documents in their entirety to become familiar with what is required, including information on all bid forms.

17. **RESERVATION OF RIGHTS**  
The Authority reserves the right to reject any and/or all bids, accept or reject any alternates, waive irregularities and technicalities if in the Authority’s sole judgement, it is in the best interest of the Authority and conforms to applicable state and local laws or regulations.

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

18. **AUTOMATIC DISQUALIFICATION**  
A Bidder will be disqualified from consideration for award of an agreement pursuant to this Request for 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 Authority Request for Bids.
- Collusion with the intent to defraud or other illegal practices upon the part of any firm submitting a bid.
- Being on the Convicted Vendors List.
- Being on a Scrutinized Companies List or otherwise ineligible to submit a bid to provide services under Section 287.135, Florida Statutes.
- Not being properly licensed by the State of Florida or Lee County prior to submitting a bid.
- Not being registered to do business in the State of Florida prior to submitting a bid.

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

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

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

20. **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, or agents 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 they intend to submit or have submitted a bid for this project. All Bidders and their subcontractors, and any agents must submit individual affidavits with their submission 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 WARNING SHALL BE AUTOMATICALLY DISQUALIFIED FROM FURTHER CONSIDERATION FOR THIS REQUEST FOR BIDS.**

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

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

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

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

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

22. **FINANCIAL RESPONSIBILITY**
During the bid evaluation process, Bidders may, 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 shall be provided to the Authority within ten (10) calendar days of the Authority’s request.

23. OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES
If mutually agreeable to the 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.

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

25. ESTIMATED QUANTITIES
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. All items listed for purchase are on an “as-needed” and/or “as funds permit” basis and the Authority may order all, or none, of the items or services described.

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

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

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

a. Bids showing omissions, alterations of form, additions not specified, or required conditional or unauthorized alternate bids.

b. Bids quoting prices that substantially deviate, either higher or lower, from those included in the bids of competing Bidders for the same line item unit costs.

c. Bids where 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.

29. **BID EVALUATION**

Upon evaluation of all bids received, a Notice of Intent to Award may be made to the lowest, responsive, and responsible Bidder(s) whose bid(s) meets the best interests of the Authority, in the Authority’s sole judgment.

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

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

30. **EXECUTION OF AGREEMENT**

The successful Bidder(s) shall execute and return the Service Provider Agreement within ten (10) calendar days from issuance of the notice of intent to award the bid. **The successful Bidder will be required to execute the Service Provider Agreement in substantially the form attached, unless amended during the bid process and prior to the opening of bids.** Failure of the successful Bidder to execute the Service Provider Agreement 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.

Upon receipt of the Service Provider Agreement executed by the successful Bidder, the Authority shall complete the execution of the awarded Service Provider 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 awarded agreement to the Bidder shall constitute the Authority’s approval to be bound by the successful Bidder’s bid and the terms of the Service Provider 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 when the best interests of the Authority will be promoted.

31. **PAYMENT**

The accepted bid price for the goods and scope of work to be provided 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 shall to include purchase order number or Contract number, as applicable and shall be submitted to Lee County Finance Department, PO Box 2463, Fort Myers, Florida, 33902.**
[END of PART A.]
PART B – SPECIAL INSTRUCTIONS AND REQUIREMENTS

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

1. MINIMUM QUALIFICATIONS
Bidders must include copies of all licenses (mechanical, occupational, etc.) required by the Port Authority and the State of Florida to supply the goods or perform the services set forth in this RFB.

Bidder(s) 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. The Port Authority reserves the right to award this contract through an approach which best serves the interests of the Port Authority; i.e., to a single vendor, multiple vendors, or on a primary/secondary vendor basis.

2. BASIS OF AWARD
Award of Bid shall be made to the lowest, responsible and responsive Bidder for all bid items combined. To be responsible Bidder shall have adequate refueling assets, acceptable emergency spill response plan and current and active sources of fuel supply. The Port Authority shall be the sole judge as to which bids are acceptable. The Port Authority reserves the right to award this contract through an approach which best serves the interests of the Port Authority; i.e., to a single vendor, multiple vendors, or on a primary/secondary vendor basis.

3. PURCHASE ORDER
Purchase orders will be issued on an as needed basis for actual services required. Actual orders for material(s) and/or service(s) listed on the Bid Form are neither guaranteed nor implied. All orders are on “as needed” and “as funds permit” basis. The Authority may order all, some, or none of the bid items listed.

4. TERM
The term of the contract will be for a three (3) year term with an option reserved to the Authority to extend the term of the agreement for one additional period of two (2) years by notifying the Provider in writing at least thirty (30) days in advance of the expiration date of the initial term or any extension term. Extension of the Agreement for the renewal periods will be upon the same terms and conditions, including prices, and shall be at the sole discretion of the Authority.

[END OF PART B.]
PART C – INSURANCE AND BONDING REQUIREMENTS

1. INSURANCE

All Bidders should furnish proof of acceptable insurance. A copy of the Bidder’s current insurance certificate or a statement from the Bidder’s insurance company verifying the firm's ability to obtain the insurance coverage as stated herein, should be submitted with the bid.

Each Bidder shall provide evidence of its ability to furnish the minimum insurance coverage either under existing policies or by virtue of a specific project policy, with deductible limits acceptable to the Authority:

- Employer Liability $1,000,000;
- Pollution Liability $2,000,000;
- Automobile Liability $1,000,000 (endorsed to include Transportation Pollution Liability insurance if not covered under the Pollution Liability policy);
- Commercial General Liability $2,000,000;
- Workers’ Compensation in accordance with Florida statutory limits.
- Any work or deliveries performed Airside will require a minimum of $5,000,000 in liability coverage.

The insurance provided will include coverage for all parties employed by the Bidder. At the discretion of the Authority, all insurance limits may be reevaluated at any time during the term of the agreement.

An insurance certificate on an approved form is required from the successful Bidder in the amounts stated above. The form must be properly executed and submitted by the insurance company and successful bidder within fifteen (15) days after notification of the Lee County Port Authority Board of Port Commissioners’ approval to award the agreement. The appointed insurance agent or carrier shall be duly licensed to provide coverage and honor claims within Florida. The certificate of insurance must give the Authority prior notice of cancellation and state that the coverage is primary and noncontributory; a waiver of subrogation in favor of the Authority will also be required.

Lee County Port Authority shall be named as an additional insured on the policy. The certificate holder shall be Lee County Port Authority, Attn: Risk Manager-Administration (riskmanagement@flylcpa.com), 11000 Terminal Access Road, Suite 8671, Fort Myers, FL 33913.

2. POLLUTION AND REMEDIATION LIABILITY INSURANCE:

If awarded this Agreement, Vendor shall maintain:

(a) Pollution and Remediation Liability Insurance, including the cost of defense during the term of this agreement and for a period of five (5) years following the completion of the Agreement. Such coverage shall apply specifically to the services/scope of work outlined in the Agreement and shall include but not be limited to Pollution Legal Liability (legal liability arising out of the discharge, dispersal, release, seepage, migration, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water, including groundwater at, under, or emanating from the project);

(b) Remediation Legal Liability/Expense (expenses incurred for or in connection with the investigation, monitoring, removal, disposal, treatment, or neutralization of a condition arising from the discharge, dispersal, release, seepage, migration, or escape of smoke, vapors, soot,
fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water, including groundwater at, under, or emanating from the Project, as well as the cost to repair or replace real or personal property damaged during the course of Remediation Expense in order to restore the property to the condition it was in prior to the Remediation Expense to the extent required by federal, state, local, or provincial laws, regulations, statutes, or any subsequent amendments thereof);

(c) Transportation Legal Liability/Expense - Pollution Legal Liability or Remediation Legal Liability/Expense arising out of the movement by the contractor/professional/consultant of product or waste of the Owner to its final delivery point as specified under this Agreement.

(d) Limits Required:
   Each Loss or Expense: $2,000,000
   Annual Aggregate: $4,000,000

   The Annual Aggregate limit shall apply separately to this project.

(f) If coverage is provided on a "Claims Made" form as opposed to an "Occurrence" form, the retroactive date for coverage shall be no later than the commencement date of the Project and shall provide that, in the event of cancellation or nonrenewal, the Extended Reporting Period (Discovery Period) for claims shall be no less than three (3) years.

(g) The Lee County Port Authority shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the Port Authority.

(h) This policy shall include contractual liability coverage to contemplate the indemnity provisions of the agreement.

3. HOLD HARMLESS AND INDEMNIFICATION Bidder agrees through submission of its bid, to indemnify, hold harmless and defend Authority and Lee County, Florida and their respective commissioners, officers, agents, and anyone directly or indirectly employed by either of them, from and against any and all claims, injuries, liabilities, damages, demands, losses, costs or actions, either at law or in equity, including, but not limited to court costs and reasonable attorney’s fees, that may be made or brought at any time in the future by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, due to any negligence, wrongful conduct, or intentional act or omission, or based on any act of fraud or defalcation, any infringement of patent rights or copyrights held by others or for the disclosure or improper utilization of any trade secrets by the Bidder during or after completion of the Work of the Bidder and persons employed or utilized by the Bidder in the performance of any agreement awarded under this Request for Bids. These obligations shall survive acceptance of any goods, services, and/or performance, and payment therefore by the Lee County Port Authority. 

[END OF PART C.]
PART D - PROJECT INFORMATION AND REQUIREMENTS

SCOPE OF WORK

It is the intent of the Lee County Port Authority to enter into a contract with a single vendor to supply and deliver Diesel and Unleaded Fuel on an as needed basis, including during emergency situations, for a period of three years with an option reserved to the Authority to renew for an additional two years. Services under the anticipated contract are expected to commence on or about March 11, 2020.

The purpose of this bid is to obtain fuel at competitive rates through a conditional contract with a proven supplier that has access to substantial volumes of petroleum products from nearby ports via contractual allocations or direct ownership and has delivery capabilities to ensure business continuity and prompt convenient service.

These specifications are intended to set forth the requirements of the Lee County Port Authority (hereafter referred to as "Port Authority") relative to the furnishing and delivering of unleaded gasoline and diesel.

The quantities listed on the bid form are approximate. The Port Authority reserves the right to purchase increased or decreased quantities, as needed to meet its needs. Further, the Port Authority may have future requirements for ethanol and bio-diesel. Pricing for ethanol and bio-diesel will be negotiated between the successful Bidder and the Port Authority's Purchasing Manager as these products become available in our area should the Port Authority require them.

Projected Annual Requirements

The quantities listed below are approximate and are for the purpose of bid evaluation. The Port Authority reserves the right to order such quantities as may be required during the contract period, but no guarantee is made as to any minimum or maximum amounts.

<table>
<thead>
<tr>
<th>Product</th>
<th>Est. Annual Usage in Gallons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unleaded Gasoline</td>
<td>184,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Product</th>
<th>Est. Annual Usage in Gallons</th>
</tr>
</thead>
<tbody>
<tr>
<td># 2 Premium Ultra Low Sulfur Diesel, On Road (Non-Dyed)</td>
<td>28,500</td>
</tr>
<tr>
<td>#2 High Sulfur Diesel, Off Road (Dyed)</td>
<td>3,000</td>
</tr>
</tbody>
</table>

Port Authority reserves the right to modify the product specifications in order to comply with any future mandates.
Fuel Requirements:

A quality motor fuel is required; contaminated and/or degraded fuel will not be acceptable. The fuel to be provided under this bid must meet the following requirements:

a. The supplied gasoline shall be visually free of undissolved water, sediment, and suspended matter. It shall be clear and bright at ambient temperatures. Anti-knock index levels, defined as the average of the research octane number and motor octane number (R + M/2) shall be 87 octane. ASTM standard specifications for automotive gasoline (D439-84 or latest revised ASTM standard or other as dictated by the Port Authority on an on-going basis) shall prevail in case of dispute of quality. Ethanol rating/content: E10 is the maximum – E15 fuels are not acceptable under this bid.

b. The #2 diesel fuel supplied shall conform to ASTM D975-81 (or latest revised ASTM standard or other as dictated by the County on an on-going basis).

c. All fuel (gasoline and diesel motor fuels) shall be volatile hydrocarbon fuel, free from water and suspended matter, and suitable for use as a fuel in internal combustion engines.

d. All fuel and fuel products shall meet or exceed State of Florida specifications found at https://www.flrules.org/gateway/ChapterHome.asp?Chapter=5J-21 or current State of Florida specifications as updated by the State.

e.Non-approved additives are prohibited from all products. Octane rating may not be achieved by the adding of an octane booster additive of any sort subsequent to the refinery process.

f. Certificates of Analysis certifying that all fuel and fuel products being purchased under any resulting term contract(s) meet the product specifications referenced in these technical specifications may be requested at any time.
Prices and Invoicing:

Bid prices shall be based upon "OPIS" (Oil Price Information Service), plus vendor markup amount per gallon to arrive at a firm fixed base price per gallon. Vendor(s) markup may include the vendor's profit, delivery costs, and other vendor overhead costs. The markup shall not change during the term of the agreement. State and federal pollution taxes are not to be included in the markup offered and not indicated in the bid pricing.

Invoice prices shall be based on the OPIS rate in effect on the date of delivery. The OPIS daily rack average must be submitted for each delivery date. Delivery location, date, product(s), and the net quantity and cost of each product (with each federal, state, and local tax itemized separately) shall be itemized on all invoices. The Port Authority purchase order number shall also be on the invoice. Other than appropriate taxes, no other charges are permitted under this agreement. Rather, these taxes are to be shown as itemized expenses within each invoice.

Product, Locations, and Storage Capacities:

The following is a list of current and anticipated primary delivery locations within the boundaries of the Southwest Florida International Airport (RSW) and Page Field General Aviation Airport. The Port Authority reserves the right to add or delete delivery locations during the term of the contract. The average delivery size is 3,000 gallons of unleaded per week and 1,000 gallons of diesel bi-weekly at RSW and 500 gallons of unleaded and 500 gallons of diesel every five (5) weeks at Page Field.

<table>
<thead>
<tr>
<th>Location</th>
<th>Site</th>
<th>Address</th>
<th>Storage Capacity (gallons)</th>
<th>Above Ground</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ultra Low Diesel/delivery</td>
<td>Unleaded/delivery</td>
</tr>
<tr>
<td>Air Cargo Lane</td>
<td>15920 Air Cargo Lane</td>
<td>6,000 Gallon Tank/ 2 times per month</td>
<td>6,000 Gallon Tank/ weekly</td>
<td>X</td>
</tr>
<tr>
<td>RSW ARFF Facility</td>
<td>17211 Perimeter Rd.</td>
<td>1,000 Gallon Tank/ 6 weeks</td>
<td>2,000 Gallon Tank/ quarterly</td>
<td>X</td>
</tr>
<tr>
<td>Page Field</td>
<td>4700 Terminal Drive</td>
<td>1,000 Gallon Tank/ monthly</td>
<td>1,000 Gallon Tank/ monthly</td>
<td>X</td>
</tr>
<tr>
<td>Two (2) Tanks on Regional Lane for Emergency Generators</td>
<td>Regional Lane</td>
<td>1,000 Gallon Tanks/ quarterly</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>One (1) Tank near the Field Shop for an Emergency Generator</td>
<td>15920 Air Cargo Lane</td>
<td>350 Gallon Tank/ quarterly</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Three (3) Tanks at the Terminal for Emergency Generators (One near each concourse)</td>
<td>11000 Terminal Access Rd.</td>
<td>4,000 Gallon Tanks/ annually</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>One (1) Tank on the first level of the Parking Garage for an Emergency Generator</td>
<td>11000 Terminal Access Rd.</td>
<td>1,000 Gallon Tank/ 3 times per year</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>One (1) Generator at old Terminal Page Field (FDLE)</td>
<td>4700 Terminal Drive</td>
<td>400 Gallon Tank/ 2 times per year</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>One (1) Generator at old Terminal Page Field (FHP)</td>
<td>4700 Terminal Drive</td>
<td>400 Gallon Tank/ 2 times per year</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>One (1) Generator at old Terminal Page Field (FHP)</td>
<td>5200 Captain Channing Page Drive</td>
<td>250 Gallon Tank/2 times per year</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>
Each location listed above shall be considered one stop. There shall be no additional cost to deliver fuel to separate tanks within the same location, to deliver two types of fuel to the same location, for a delivery of one (1) or two (2) types of fuel to two (2) different locations, or to deliver a tank wagon of one (1) or two (2) types of fuel to multiple locations.

**MAP OF FUEL LOCATIONS AT SW FLORIDA INTERNATIONAL AIRPORT**
MAP OF FLEET FUEL TANK LOCATIONS AT PAGE FIELD AIRPORT

MAP OF GENERATOR LOCATIONS AT PAGE FIELD AIRPORT
Order and Delivery Requirements:

When the fuel is delivered, a Port Authority employee may or may not be present. The delivering driver will meter the product into the tanks, sign and furnish a delivery ticket with the beginning and ending meter readings. Optional metering arrangements may be considered if based upon State certified metering systems or State calibrated tanks.

Deliveries are expected within twenty-four (24) hours of the time the order is placed by the Port Authority, to assure continuity of on-going operations. If awarded vendor cannot deliver the requested fuel, as specified in the contract, within 24 hours of receiving the order, vendor shall notify the requesting department immediately by email and the Port Authority reserves the right to purchase fuel from the secondary vendor. Failure to notify the Port Authority or multiply instances of late or incorrect deliveries shall be grounds for immediate termination of this contract.

Deliveries shall be made to the Port Authority between the hours of 7:00 a.m. to 2:30 p.m., Monday through Friday unless other arrangements are made with the Port Authority Fleet Management. Deliveries made to in-ground tanks shall include removal of any accumulated or standing water in spill containment buckets to prevent the water from entering the tank when opening the fill cap.

There shall be no minimum quantities for tank wagon orders or any type of minimum order charges above those specifically stated in this agreement. Deliveries will be made with trucks owned by the successful Bidder. Common carrier deliveries may be accepted during times of emergency with prior approval of the Fleet Management. Billings for all deliveries shall be based on actual meter readings.

Emergency Situations:

Emergency situations include, but are not limited to, natural disasters such as hurricanes, tornados, windstorms, floods and fires as well as manmade events such as civil unrest and terrorist attacks.

Should the vendor fail to deliver gasoline and diesel fuel promptly when ordered, the requesting participating jurisdiction or entity reserves the right to procure the order elsewhere, in which event, the extra cost of procuring such fuel above the contract price may be charged against the awarded vendor and may be deducted from any moneys due or which may become due.

Termination:

Should the successful bidder be found to have failed to perform services in a manner satisfactory to the Port Authority, the Port Authority may terminate this Agreement immediately for cause; further the Port Authority may terminate this Agreement for convenience upon giving thirty (30) day written notice to the vendor. The Port Authority shall be sole judge of non-performance.
Inability to Provide Product:

Should circumstances arise where the successful bidder is unable to supply the requested product(s) within five (5) working days, the Port Authority may select an alternative supplier to provide the product. In such cases, the extra cost of procuring such fuel above the contract price may be charged against the awarded vendor and may be deducted from any moneys due or which may become due.

The successful bidder shall advise the Port Authority Purchasing Manager in writing when a product is unavailable as soon as it receives such information. The successful bidder shall again notify the Port Authority Purchasing Manager when it is able to resume supplying the product.

[END OF SECTION D]
FORM 1:  BIDDER’S CERTIFICATION
Note: This form must be submitted with the bidder’s bid submittal

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

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

<table>
<thead>
<tr>
<th>Addendum #</th>
<th>Date:</th>
<th>Addendum #</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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

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

NAME OF BUSINESS

MAILING ADDRESS

AUTHORIZED SIGNATURE

CITY, STATE & ZIP CODE

NAME, TITLE, TYPED

TELEPHONE NUMBER / FAX NUMBER

FEDERAL IDENTIFICATION #

EMAIL ADDRESS

State of: ________________________________
County of: ________________________________
This foregoing instrument was acknowledged before me this ____________________ day of ____________________, 20___, by ____________________, who is personally known to me or produced ____________________ as identification.

Signature of Notary ____________________ Serial/Commission No. ____________________
Lee County Port Authority Purchasing Office  
Southwest Florida International Airport  
11000 Terminal Access Road, Suite 8671  
Fort Myers, Florida 33913

The Undersigned, hereinafter called "BIDDER," having become familiar with the local conditions, nature, and extent of the work, and having examined carefully the bid documents, including but not limited to, Part B, Special Instructions and Requirements, Part D, Project Information Specifications, and having fulfilled bid requirements herein, Bidder agrees to furnish all labor, materials, equipment, and other items, facilities and services for the supply and delivery of:

**DIESEL AND UNLEADED FUEL FOR THE LEE COUNTY PORT AUTHORITY**

in full accordance with this Request for Bid and all other documents related there to on file in the Purchasing Office and, if awarded the contract, to perform said work for the pricing indicated in the following bid schedule:

### Fuel by Tank Wagon Delivery

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Product Type</th>
<th>Unit of Measure</th>
<th>Base Price (Per Gallon)</th>
<th>Vendor Markup Amount Per Gallon (Excluding Tax)</th>
<th>Total Cost Per Gallon (Column A+B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unleaded 87 Octane AKI</td>
<td>Per Gallon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>#2 Premium Ultra Low Sulfur Diesel, On Road (Non-Dyed)</td>
<td>Per Gallon</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>#2 High Sulfur Diesel, Off Road (Dyed)</td>
<td>Per Gallon</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

"The "Base" price per gallon will be filled in by the vendor and will be based upon the average Tampa, Florida price as reported in the "Oil Price Information Service" ("OPIS") on **October 31, 2019 at 10 a.m.**"
RFB 19-35MLW: Purchase of Diesel and Unleaded Fuel for the Lee County Port Authority

FORM 2 - OFFICIAL BID FORM - (Continued)

BID NO. **RFB 19-35MLW**  BIDDER'S NAME: ________________________________

All required licenses are attached?

___________________________________________________________

Bidders base location address to confirm bidder has a (4) four-hour response time.

___________________________________________________________

Number of tank wagons owned and the gallon size of each.

___________________________________________________________

Capacity in gallons of fixed fuel storage tanks at base location

___________________________________________________________

Is your supply point equipped with an emergency generator?

___________________________________________________________

Is your Emergency Spill Response Plan attached?

___________________________________________________________

Proof of Fuel Supply contracts (Form 7)

___________________________________________________________
FORM 3: LOBBYING AFFIDAVIT

STATE OF: ____________________________

COUNTY OF: ____________________________

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

________________________________________

AFFIANT

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

______________________________
Signature of person taking acknowledgment

______________________________
Name typed, printed, or stamped

______________________________
(Title or rank)

______________________________
Signature of Notary (Serial or Commission No.)
NOTE: THIS FORM IS REQUIRED FROM ALL BIDDERS

FORM 4: PUBLIC ENTITY CRIMES FORM

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

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

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

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

BIDDER'S NAME: _______________________________
FORM 5: BIDDER’S SCRUTINIZED COMPANIES CERTIFICATION

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

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

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

__________________________________________________
[Signature]

Notary Public
State of ____________________
County of ____________________

Sworn to and subscribed before me this _________ day of _____________________, 20______.

by ____________________________________________ who produced the following as identification
___________________________________ (Type of identification) or is personally known to me. My
Commission Expires____________________.

[stamp or seal]

________________________________
[Signature of Notary Public]

_____________________________
[Typed or printed name]
FORM 6: LOCAL PREFERENCE AFFIDAVIT

The firm submitting the attached bid is either (please check one):

☐ A firm whose principal place of business is located within the boundaries of Lee County, Florida.

Please identify the firm name and physical address below:

_____________________________
_____________________________
_____________________________
_____________________________ (in Lee County, Florida)

☐ A firm that has provided goods or services to Lee County or the Lee County Port Authority on a regular basis for the preceding consecutive three (3) years and has the personnel, equipment, and materials located within the boundaries of Lee County sufficient to constitute a present ability to perform the service or provide the goods for this project.

Please provide the following information:

Number of employees currently working in Lee County full time = _____

Projects completed in Lee County over the last consecutive three (3) years:

_____________________________ Began in 20__ Completed in 20__
_____________________________ Began in 20__ Completed in 20__
_____________________________ Began in 20__ Completed in 20__
_____________________________ Began in 20__ Completed in 20__

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 _____________
Personally known _________________ or produced identification _________________.
My Commission Expires _________________
(Type of identification) ______________________

Printed, typed or stamped commissioned name of Notary Public

[Remainder of page intentionally left blank]
## FORM 7: FUEL SUPPLY CONTRACTS

<table>
<thead>
<tr>
<th>COMPANY</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTACT NAME</td>
</tr>
<tr>
<td>ADDRESS</td>
</tr>
<tr>
<td>CITY, STATE, ZIP CODE</td>
</tr>
<tr>
<td>TELEPHONE</td>
</tr>
<tr>
<td>FAX NUMBER</td>
</tr>
<tr>
<td>E-MAIL ADDRESS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COMPANY</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTACT NAME</td>
</tr>
<tr>
<td>ADDRESS</td>
</tr>
<tr>
<td>CITY, STATE, ZIP CODE</td>
</tr>
<tr>
<td>TELEPHONE</td>
</tr>
<tr>
<td>FAX NUMBER</td>
</tr>
<tr>
<td>E-MAIL ADDRESS</td>
</tr>
</tbody>
</table>
**Reference Survey Directions**

For Bids this form will be **requested from the apparent low Bidder prior to the award.** Provide this form to a minimum of three references. The Authority reserves the right to verbally verify references.

1) **Section 1:** Bidder is to complete with reference respondent’s information prior to providing to them for their response. *(This is not the Bidder’s information.)*
2) **Section 2:** Enter the name of the Bidder; provide the project information that the reference respondent is to provide a response for.
3) **Section 3:** To be completed by the reference respondent.
4) **Section 4:** The reference respondent to print and sign name
5) **A minimum of 3 reference responses** are requested to be returned to the Procurement Agent.
6) Failure to obtain reference surveys may make your company non-responsive.
FORM 8: PROFESSIONAL REFERENCE SURVEY
RFB 19-35 MLW
PURCHASE OF DIESEL AND UNLEADED FUEL
FOR THE LEE COUNTY PORT AUTHORITY
AT SOUTHWEST FLORIDA INTERNATIONAL AIRPORT

Section 1

<table>
<thead>
<tr>
<th>Name &amp; Title:</th>
<th>Please return completed form to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company:</td>
<td>Procurement Agent: Megan Wilson</td>
</tr>
<tr>
<td>Email:</td>
<td>Due Date:</td>
</tr>
<tr>
<td>Phone:</td>
<td>Total # Pages:</td>
</tr>
</tbody>
</table>

Section 2

<table>
<thead>
<tr>
<th>Bidder Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client's Project Name:</td>
</tr>
</tbody>
</table>

You or your company have been given as a reference on the project identified above. Please provide responses in section 3:

Section 3

1. How long have you done business with this company?

2. What type(s) of business have you done with this company?

3. What is your overall impression of this company’s qualifications?

<table>
<thead>
<tr>
<th>E (Excellent)</th>
<th>G (Good)</th>
<th>S (Satisfactory)</th>
<th>NS (Not Satisfactory)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. How would you rate the Company’s overall service quality?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>5. How would you rate their supervisors and staffing?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>6. How would you rate their communication?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>7. How would you rate their preventative maintenance program?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>8. How would you rate their responsiveness?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>9. How would you rate their invoicing and reporting process?</td>
<td>E</td>
<td>G</td>
<td>S</td>
</tr>
<tr>
<td>10. WOULD YOU USE THIS COMPANY AGAIN?</td>
<td>YES</td>
<td>NO</td>
<td></td>
</tr>
<tr>
<td>11. Do you have any additional comments regarding the quality of the services his company has furnished and performed at your facility?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Page 31 of 34
NO BID SUBMISSION (OPTIONAL FORM)

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

NO BID SUBMISSION

If you are not submitting a Bid, please indicate the reason(s) by checking any appropriate item(s) listed below and return this form to MEGAN WILSON, Procurement Agent, at mlwilson@FlyLCPA.com or Lee County Port Authority, 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913

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

- Services are not available through our company
- Our services do not meet the Scope of Services
- Circle one - Scope of Services were:
  - not applicable
  - too rigid
  - too vague
  - not clearly understood
  - Insufficient time allowed for preparation
- Other reason(s):

How did you learn about this solicitation?

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

Name of Firm: ________________________________
Name of Individual: ___________________________
Telephone Number: __________________________ Fax: __________________________
Email Address: _______________________________

DATE: ________________________________
SEALED BID LABEL

Cut along the outer border and affix this label to your sealed solicitation submission to identify it as a “Sealed Bid”

SEALED BID • DO NOT OPEN

SOLICITATION NO.:        RFB-19-35

SOLICITATION TITLE:       Purchase of Diesel and Unleaded Fuel for the Lee County Port Authority

DATE DUE:                Monday, December 09, 2019

TIME DUE:                Prior to: 2:00 PM

SUBMITTED BY:            (Name of Company)

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

Note: Submittals received after the time and date above will not be accepted.
[This page intentionally left blank]
November 25, 2019

Mr. Lachlan Cheatham
PALMDALE OIL COMPANY
911 N. 2nd Street
Ft. Pierce, FL 34950

RE: RFB 19-35MLW: PURCHASE OF DIESEL AND UNLEADED FUEL FOR THE LEE COUNTY PORT AUTHORITY

Dear Mr. Cheatham,

Attached you will find the agreement for the referenced solicitation attached for your signature. Please perform the following actions within ten (10) days:

- Two originals of the attached agreement are required. Sign in blue ink in duplicate and 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.

- Provide the Certificate of Insurance in accordance with the insurance requirements set forth in the solicitation document.

Return two originals of the agreement and the certificate of insurance to Megan Wilson, Procurement Agent, at the address appearing below.

11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913-8213

A fully executed copy of the agreement will be furnished for your records. Lee County Port Authority looks forward to doing business with you.

Sincerely,

Melissa M. Wendel, CPPO
Procurement Manager

MMW/dnc

cc: Greg Hagen, Port Authority Attorney
    Megan Wilson, Purchasing Office
THIS AGREEMENT is entered this ______day of___________, 20____, 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 PALMDALE OIL COMPANY, INC., a Florida corporation, ("PROVIDER"), at 911 North 2nd Street, Fort Pierce, FL 34950, Federal Identification Number 59-2358666.

WITNESSETH

WHEREAS, the Authority desires to purchase diesel and unleaded fuel for the Southwest Florida International Airport/Page Field General Aviation Airport in Fort Myers, Florida; and,

WHEREAS, the Provider certifies that it has been granted and possesses valid, current licenses to do business in the State of Florida and in Lee County, Florida, issued by any applicable State Boards or Government Agencies responsible for regulating and licensing the services to be provided by the Provider under this Agreement; and,

WHEREAS, Provider has reviewed the goods and services required under this Agreement and has submitted a Bid to provide the requested goods and services, and
states that it is qualified, willing and able to provide and perform all such services and provide any goods required according to the provisions, conditions and terms below, and in accord with all governing federal, state and local laws and regulations; and,

WHEREAS, the Provider has been selected to provide the services described below as the result of a competitive selection process by Authority that complies with any applicable Florida Statues and the Authority's Purchasing Policy, as approved and put into effect by the Authority’s Board of Port Commissioners.

NOW, THEREFORE, in consideration of the foregoing and the terms and provisions as contained herein, and the mutual consideration described below, the parties agree as follows:

1.0 RECITALS

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

2.0 DEFINITIONS

2.1 AUTHORITY shall mean the Lee County Port Authority and its governing Board of Port Authority Commissioners.

2.2 PROVIDER shall mean the individual, firm or entity offering services that it shall be legally obligated, responsible, and liable for providing and performing and any and all of the services, work and materials, including services and/or the work of sub-contractors, required under this Agreement.

3.0 SCOPE OF SERVICES

Provider hereby agrees to provide all goods and the services set forth in Exhibit "A", entitled "Scope of Services", which is attached hereto and made a part of this Agreement.
4.0 REQUEST FOR BIDS AND PROVIDER'S BID - INCORPORATION BY REFERENCE

The terms of the Request for Bids, and Provider's Bid received in response, 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 this Agreement and the Request for Bids; or between this Agreement and Provider's Bid; 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 those representations and this information has resulted in the selection of Provider to provide goods or perform services under this Agreement.

5.0 TERM

The term of this Agreement shall be for three (3) years commencing on the date first written above. The Authority will have the option to extend the term of this Agreement for a single two (2) year extension term on the same terms and conditions as the initial term, including prices from the expiration date of the initial term, by notifying Provider in writing at least thirty (30) days prior to the expiration date of the initial term. Any such extension shall be executed with the same formality as the original Agreement.

6.0 OBLIGATIONS OF THE PROVIDER

The obligations of the Provider with respect to all the Basic Services and any Additional Services authorized under this Agreement shall include, but are not limited to the following:

6.1 LICENSES

The Provider agrees to obtain and maintain throughout the term of this Agreement, all such licenses as are required to do business in the State of Florida and in
Lee County, Florida, including, but not limited to, licenses required by any applicable State Boards or other governmental agencies responsible for regulating and licensing the services provided and performed by the Provider under this Agreement.

6.2 PERSONNEL

(1) Qualified Personnel - The Provider agrees that when the services to be provided and performed relate to (a) professional service(s) which, under Florida Statutes, require 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 services to be provided under this Agreement.

Services performed under this Agreement shall be performed by Provider's own staff, unless agreed in advance by the Authority.

(2) Project Manager - Provider agrees to employ and designate a qualified, licensed professional to serve as Provider's project manager ("Project Manager") for this Agreement. Provider shall designate its Project Manager in writing within five (5) calendar days after receiving an executed original of this Agreement. Provider's Project Manager designation shall be executed by the proper officers of Provider, and shall acknowledge that the Project Manager shall have full authority to bind and obligate Provider on all matters arising out of or relating to this Agreement. The Project Manager shall be specifically authorized and responsible to act on behalf of Provider with respect to directing, coordinating and administering all aspects of the services provided under this Agreement. Provider agrees
that the Project Manager shall devote whatever time is required to satisfactorily manage all services provided by Provider under this Agreement. Provider 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. Provider further agrees to promptly remove and replace the Project Manager, or any other personnel employed or retained by Provider, or any subcontractor or any personnel of any such subcontractor engaged by Provider 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.

6.3 STANDARDS OF SERVICE

The Provider agrees to provide and perform all services under this Agreement in accordance with 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 to be provided and/or performed by the Provider.

6.4 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

(1) Responsibility to Correct - The Provider agrees to be responsible for the quality, timely fulfilment of all fuel orders, and the coordination of all services, provided, and/or furnished by Provider. The Provider shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such services, and products supplied under this Agreement resulting from the negligent act,
errors or omissions or intentional misconduct of Provider or any persons employed by Provider or performing services at Provider's direction under this Agreement.

(2) Authority's Approval Shall Not Relieve Provider of Responsibility - Neither review, approval, nor acceptance by Authority of any services, work or materials furnished hereunder by the Provider, shall in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials. Neither the Authority's review, approval or acceptance of, nor payment for, any part of the Provider's services, work and materials shall 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.

6.5 FUEL SUPPLY

Provider must maintain current and active fuel supply contracts at the fuel depots at either, or both, Port Everglades and the Port of Tampa during the term of this Agreement and must furnish proof of current fuel supply contracts on request.

6.6 FACILITIES AND EQUIPMENT

Provider must maintain a base location within the state of Florida, and own tank wagons, and fixed reserve tanks to provide timely fuel services to the Port Authority during both normal and emergency operations.

6.7 EMERGENCY SPILL RESPONSE

Provider must provide, and update as necessary, a written plan for emergency spill response and clean-up of fuel spillage. The plan must meet all federal,
state, and local laws. Provider must clean up all spills created by Provider in accordance
with the emergency spill response plan, and report those spills to the Authority and to all
regulatory agencies as required by law.

7.0 **AUTHORITY'S RESPONSIBILITIES**

Authority shall:

7.1 Designate in writing a project manager to act as Authority's representative with respect to the issuance of Task Authorizations for services rendered under this Agreement ("Project Manager"). The Project Manager shall have exclusive authority to execute Task Authorizations, and any modifications or changes to Provider's (1) scope of services; (2) time of commencement or delivery; or (3) compensation related to services required under any Purchase Order. The Project Manager shall have authority to transmit instructions, receive information, and to interpret and define Authority's policies and decisions with respect to Provider's services under this Agreement. The Project Manager shall review and make appropriate recommendations on all requests submitted by Provider for payment for services.

7.2 The Project Manager is not authorized to, and shall not, issue any verbal orders or instructions to Provider 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 hereunder; (2) the time Provider is obligated to furnish goods or commence and complete all such services; or (3) the compensation Authority is obligated or committed to pay Provider.

7.3 Provide all criteria and information requested by Provider as to Authority's requirements for any project or task.
7.4 Arrange access, in accord with Authority's security regulations, for Provider to enter any airport site to deliver goods or perform services. Provider acknowledges that Authority may provide such access during times that are not the Provider's normal business hours.

7.5 Notify Provider of any defects or deficiencies in goods provided or services rendered by Provider.

8.0 COMPENSATION AND METHOD OF PAYMENT

8.1 BASIC SERVICES

Authority will pay Provider for all requested and authorized goods and services provided in accordance with the requirements, provisions, and/or terms of this Agreement based on the compensation schedule set forth in Exhibit "B," which is attached hereto and made a part of this Agreement.

8.2 METHOD OF PAYMENT

(1) MONTHLY STATEMENTS

The Provider shall be entitled to submit not more than one invoice to the Authority for each calendar month based on the compensation schedule set out in Exhibit "B" attached and incorporated by reference. The monthly invoice shall cover all goods furnished and services rendered during the preceding calendar month. The Provider shall submit its invoices to the Authority's Finance Department. The Provider's invoice(s) shall be itemized to correspond to the basis of compensation as set forth in this Agreement. Invoices shall include an itemized description of the goods and services provided. Failure by the Provider to follow these
instructions shall result in an unavoidable delay of payment by the Authority.

(2) PAYMENT SCHEDULE
The Authority shall issue payment to the Provider within forty-five (45) calendar days after receipt of an invoice from the Provider that is in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. If Authority objects or takes exception to the amount of any invoice, the Authority shall notify the Provider of such objection or exception within forty-five (45) days of receipt of the invoice. If such objection or exception remains unresolved at the end of the forty-five (45) day period, the Authority shall withhold the disputed amount and make payment to the Provider of all amounts not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties to this Agreement.

8.3 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE AUTHORITY

In the event of termination of this Agreement for the convenience of the Authority, the Authority shall compensate the Provider for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the Provider in effecting the termination of services and work, and incurred by the submittal to the Authority of any project documents.

8.4 PAYMENT WHEN SERVICES ARE SUSPENDED

If the Authority suspends the Provider's services or work on all or part of the services required by this Agreement, the Authority shall compensate the Provider 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 such suspension.

9.0 INTERUPTION IN SERVICE

9.1. If Provider is obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of Provider, and not due to its own fault or neglect, including but not restricted to: Acts of God or of public enemies, acts of government or of Authority, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then Provider shall notify Authority in writing within seventy-two (72) hours after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Provider may have had to request a time extension.

9.2. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of Provider's services from any cause whatsoever, including those for which Authority may be responsible in whole or in part, shall relieve Provider of its duty to perform services or give rise to any right to damages or additional compensation from Authority. Provider's sole remedy against Authority will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

10.0 INDEMNIFICATION

10.1. Provider shall indemnify, hold harmless and defend Authority and Lee County, Florida, and their respective commissioners, officers, agents, and anyone employed directly or indirectly by either of them, from and against all claims, injuries, liabilities, damages, demands, losses, costs or actions, either at law or in equity,
including, but not limited to, court costs and reasonable 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, wrongful conduct or intentional act or omission or based on any action of fraud or defalcation of Provider, or other persons employed or utilized by Provider in the performance of this Agreement.

If this indemnity provision is deemed void under Florida law, then the Provider shall indemnify and hold harmless Lee County, the 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 liabilities, damages, losses or costs including, but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Provider or persons employed or utilized by the Provider in the performance of the services under this Agreement.

10.2. With respect to and in consideration for the indemnifications provided by Provider in paragraph 10.1 above, Authority agrees to pay to Provider ten percent (10%) of the total compensation paid to Provider under this Agreement, the sufficiency and receipt of which is hereby acknowledged.

11.0 FAILURE TO PERFORM

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

12.0 PUBLIC RECORDS

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

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

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

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

(3) **Airport Security Systems** - Section 281.301, Florida Statutes, exempts information relating to the security systems for any property owned by or leased to the Authority and any information relating to the security systems for any privately-owned or leased property which is in Authority's possession, including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information, is confidential and exempt from disclosure.
Section 119.071(3)(a)1. and 2., Florida Statutes, reiterates the security system exemption and expands upon it to include threat assessments; threat response plans; emergency evacuation plans; shelter arrangements; security manuals; emergency equipment; and security training as confidential and exempt from disclosure.

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

13.0 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 agent, employee, subcontractor, or invitee of the Provider, Provider shall notify the Airport’s Police Department that the 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 agent, employee, subcontractor, or invitee of the Provider, Provider shall surrender any Airport Security Identification Badge held by the Provider or by Provider’s agents, employees, subcontractors, or invitees. Should Provider fail to surrender these items within five (5) days, the Provider shall be assessed a fee of Twenty-Five Dollars ($25.00) per identification badge not returned. This fee will be billed to the Provider or deducted from any money owing to the Provider, at the Authority’s discretion.

14.0 ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The Provider shall not assign or transfer any of its rights, benefits or obligations hereunder, without the prior written consent of Authority. The Provider shall have the right, subject to the Authority’s prior written approval, to employ other persons and/or firms
to serve as subcontractors to Provider in connection with the Provider's performance of services and work under the requirements of this Agreement.

15.0 PROVIDER AN INDEPENDENT CONTRACTOR

The Provider is an independent contractor and is not an employee or agent of the Authority. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the Authority and Provider, its employees, agents, subcontractors or assigns, during or after the performance of this Agreement.

16.0 F.A.A. NON-DISCRIMINATION CLAUSE

The Provider, for itself, its successors in interest, and assigns, as part of the consideration hereof, agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its D.B.E. program or the requirements of 49 CFR Part 26.

17.0 F.A.A. DISADVANTAGED BUSINESS ENTERPRISE (D.B.E. CLAUSE)

The Provider or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Provider shall carry out applicable requirements of 49 CFR Part 23 and Part 26 in the award and administration of DOT-assisted contracts. Failure by the Provider 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 Port Authority deems appropriate.

18.0 INSURANCE

During the term of this Agreement, Provider shall provide, pay for, and maintain, with companies satisfactory to Authority, the types of insurance described herein. Provider further agrees to provide Authority's Risk Manager with advance written notice
of the cancellation or non-renewal of any required insurance coverage and to obtain
replacement coverage as soon as possible. All insurance shall be from responsible
companies duly authorized to do business in the State of Florida and/or responsible risk
retention group insurance companies registered with the State of Florida. Promptly after
execution of this Agreement by both parties, the Provider must obtain insurance
coverages and limits required as set out below and evidenced by properly executed
Certificates of Insurance on forms which are acceptable to the Authority’s Risk Manager.
The Certificates must be signed by an Authorized Representative of the insurance
company/companies shown on the Certificates with proof that he or she is an authorized
representative thereof. In addition, copies of all insurance policies shall be provided to
Authority, on a timely basis, if requested by Authority.

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 with 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 Provider from potential insurer insolvency.

All policies of insurance shall contain provisions that advance written notice shall
be given to Authority of any cancellation, intent not to renew, material change or alteration,
or reduction in the policies’ coverages, except in the application of the Aggregate Limits
provision of any policy. In the event of a reduction in the Aggregate Limit of any policy,
Provider shall immediately take steps to have the Aggregate Limit reinstated to the full
extent permitted under such policy. All of Provider’s insurance coverages shall be
primary and non-contributory to any insurance or self-insurance program carried by
Authority and applicable to work under this Agreement and shall include waiver of subrogation in favor of Authority.

The acceptance by Authority of any Certificate of Insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the requirements of this Agreement.

All of Provider's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include a waiver of subrogation in favor of Authority.

No goods or services shall be provided under this Agreement unless and until the required Certificates of Insurance are received and approved by Authority.

18.1. INSURANCE REQUIRED

Before starting and until acceptance of any work by Authority, Provider shall procure and maintain insurance of the types and to the limits specified in paragraphs 18.2.1 through 18.2.6, inclusive below. All liability insurance policies obtained by Provider to meet the requirements of this Agreement, other than Worker's Compensation and Employer's Liability and Professional Liability policies, shall name Authority as an additional insured as to the services of Provider under this Agreement and shall contain the severability of interests provisions.

18.2. COVERAGES

The amounts and types of insurance described below are the minimum requirements and are not intended to limit the Authority's access to additional coverage if more coverage is available. All amounts and types of insurance shall conform to the
following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

18.2.1. **Commercial General Liability Insurance** Provider shall maintain commercial general liability insurance. Coverage shall include, but not be limited to, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage including Completed Operations, Broad Form Contractual Liability and XCU Coverages. If Provider provides any construction work, it must also include Products & Completed Operations, with the Completed Operations Coverage maintained for any project under this Agreement and then for not less than five (5) years following completion and acceptance of the work by Authority. Limits of coverage shall not be less than the following:

- Each Occurrence Personal and Advertising Injury $2,000,000

If the General Liability insurance required herein is issued or renewed on a "claims made" form, as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of any Task under this Agreement and shall provide that in the event of cancellation or non-renewal the discovery period for insurance claims (Tail Coverage) shall be unlimited.

18.2.2. **Automobile Liability Insurance** shall be maintained by Provider 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 $1,000,000 Combined Single Limit

Any policy of Automobile Liability Insurance must be endorsed to include Transportation Pollution Liability Insurance unless that coverage is provided by the Pollution Liability policy described below.
18.2.3. **Pollution Liability Insurance** Provider shall maintain pollution liability insurance with limits of not less than $2,000,000.

Provider must maintain:

(a) Pollution and Remediation Liability Insurance, including the cost of defense during the term of this Agreement and for a period of five (5) years following completion of this Agreement. Such coverage shall apply specifically to the services/scope of work outlined in this Agreement and shall include but not be limited to Pollution Legal Liability (legal liability arising out of the discharge, dispersal, release, seepage, migration, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water, including groundwater at, under, or emanating from the project);

(b) Remediation Legal Liability/Expenses (expenses incurred for or in connection with the investigation, monitoring, removal, disposal, treatment, or neutralization of a condition arising from the discharge, dispersal, release, seepage, migration, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water, including groundwater at, under, or emanating from the Project, as well as the cost to repair or replace real or personal property damaged during the course of Remediation Expense in order to restore the property to the condition it was in prior to the Remediation Expenses to the extent required by federal, state,
local, or provincials laws, regulations, statutes, or any subsequent amendments thereof);

(c) Transportation Legal Liability/Expenses – Pollution Legal Liability or Remediation Legal Liability/Expense arising out of the movement by the contractor/professional/consultant of product or waste of the Owner to its final delivery point as specified under this Agreement.

(d) Limits Required:
Each Loss or Expense: $2,000,000
Annual Aggregate: $4,000,000

The Annual Aggregate limit shall apply separately to this project.

(e) If coverage is provided on a “Claims Made” form as opposed to an “Occurrence” form, the retroactive date for coverage shall be no later than the commencement date of the Project and shall provide that, in the event of cancellation or nonrenewal, the Extended Reporting Period (Discovery Period) for claims shall be no less than three (3) years.

(f) The Lee County Port Authority shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the Port Authority.

(g) This policy shall include contractual liability coverage to contemplate the indemnity provisions of this Agreement.

18.2.4. Worker's Compensation and Employers Liability Insurance shall be maintained by Provider during the term of this Agreement for all employees engaged in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:
18.2.5. Provider must use Authority's Certificate of Insurance attached as Exhibit “C”, 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 Provider's insurance representatives and must be submitted for Authority's review as to acceptability. If any insurance provided under this Agreement expires prior to the completion of the Work, renewal Certificates of Insurance on an acceptable form must be furnished to Authority's Risk Manager at least thirty (30) days prior to the date of expiration. Copies of the renewal policies shall also be furnished to the Risk Manager if requested by Authority.

18.2.6. If Provider does not maintain the insurance coverages required by this Agreement, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Provider for such coverages purchased. Authority shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

19.0 **DUTIES AND OBLIGATIONS IMPOSED ON THE PROVIDER**

The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
20.0 NOTICE REGARDING PUBLIC ENTITY CRIMES

Section 287.133(3)(a) (1995) requires the Authority to notify Bidder/Lessee/Tenant of the provisions of Section 287.133(2)(a) F.S.

Section 287.133(2)(a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

A. Contracting to provide goods or services to a public entity.
B. Submitting a bid on a contract for construction or repair of a public building or public work.
C. Submitting bids on leases of real property to a public entity.
D. Being awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of $35,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

21.0 OWNERSHIP AND TRANSFER OF DOCUMENTS

All documents such as printed materials, computer programs, memoranda, research notes, evaluations, reports and other records and data relating to the goods and services specifically prepared or developed by the Provider under this Agreement shall be the property of the Provider, until the Provider has been paid for performing the services and work required to produce such documents.

Upon completion, suspension, or termination of this Agreement, all of the above documents, to the extent requested by the Authority, shall be delivered to the Authority or to any subsequent Provider within thirty (30) calendar days.
The Provider, at its expense, may make and retain copies of all documents delivered to the Authority for reference and internal use. Any subsequent use of the documents and materials listed above shall be subject to the Authority’s prior review and approval.

22.0 MAINTENANCE OF RECORDS

The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the Provider for a minimum of five (5) years from the date of termination of this Agreement, or for such period as required by law.

The Authority and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Authority deems necessary during the period of this Agreement, and during the period as set forth in the paragraph above; provided, however, such activity shall be conducted only during normal business hours of the Provider and at the expense of the Authority.

23.0 NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise with, or any rights in favor of, any third party.

24.0 APPLICABLE LAW

This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement

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shall be brought either in the Florida state courts in Lee County, Florida, or in the United States Federal District Court for the Middle District of Florida, Fort Myers Division. The prevailing party in any such suit or action shall be entitled to recover from the other party their reasonable attorneys’ fees and court costs.

25.0 PROHIBITED INTERESTS

No member, officer or employee of the Port Authority or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

26.0 LOBBYING CERTIFICATION

The Port Authority agrees that no Federal appropriated funds have been paid or will be paid by or on behalf of the Port Authority, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Port Authority to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Port Authority shall require that the language of this section be included in this award document and any award document for all subawards at all tiers (including
subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

27.0 COVENANTS AGAINST DISCRIMINATION

27.1 DBE Policy. It is the policy of the Department of Transportation (the "DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Provider agrees to ensure that DBE's as defined in 49 CFR Part 23 and Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Provider shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

27.2 Prompt Payment Requirements. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, therefore, the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Provider agrees to pay each subconsultant under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Provider receives from Authority. Provider agrees further to return any retainage payments to each subconsultant within forty-five (45) days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE subconsultants.

27.3 Incorporation of Provisions. Provider shall include the provisions of paragraphs 27.1 through 27.2 in every subcontract, including procurement of materials.
and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Provider shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Provider becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Provider may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Provider may request the United States to enter into such litigation to protect the interests of the United States.

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 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.
29.0 **GENERAL CIVIL RIGHTS CLAUSE**

The Contractor agrees to comply with pertinent statute, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or 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.

30.0 **E-VERIFY**

Provider agrees that it will enroll and participate in the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program. The Provider further agrees to provide the Authority with proof of such enrollment within thirty (30) days of the date of this Agreement. Once enrolled, Provider agrees to use the E-Verify Program to confirm the employment eligibility of:

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 under the Agreement.

Provider further agrees that it will require each contractor or subcontractor performing work or providing services under this Agreement to enroll in and use the U.S. Department of Homeland Security's E-Verify Program for Employment Verification to verify the employment eligibility of all persons employed by the contractor or subcontractor during the term of this Agreement.
Provider agrees to maintain records of its participation and compliance with the provisions of the E-Verify Program, including participation by its contractors and subcontractors as provided above, and to make such records available to the Authority or other authorized state or federal agency consistent with the terms of this Agreement.

Compliance with the terms of this Section is made an express condition of this Agreement, and the Authority may treat failure to comply as a material breach of the Agreement and grounds for immediate termination.

31.0 HEADINGS

The headings of the Articles, Sections, Exhibits, and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits and Attachments.

32.0 NOTICES AND ADDRESS

32.1 All notices required and/or made pursuant to this Agreement to be given by either party to the other shall be in writing and shall be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

LEE COUNTY PORT AUTHORITY
11000 Terminal Access Road, Suite 8671
Fort Myers, FL 33913
Attention: Airport Executive Director

PALMDALE OIL COMPANY, INC.
911 North 2nd Street
Fort Pierce, FL 34950
Attention: Lachlan L. Cheatham, President

32.2 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.
33.0 TERMINATION OR SUSPENSION

33.1. Provider shall be considered in material default of this Agreement and such default will be considered cause for Authority to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under any Task Authorization, or (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 Provider, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. Authority may so terminate this Agreement, in whole or in part, by giving Provider seven (7) calendar days written notice.

33.2. If, after notice of termination of this Agreement, it is determined for any reason that Provider was not in default, or that its default was excusable, or that Authority was not entitled to the remedies against Provider provided herein, then Provider's remedies against Authority shall be the same as and limited to those afforded Provider under paragraph 31.3. below.

33.3. Authority shall have the right to terminate this Agreement, in whole or in part, without cause upon thirty (30) calendar days written notice to Provider. In the event of such termination for convenience, Provider's recovery against Authority shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Provider that are directly attributable to the termination, but Provider shall not be entitled to any other or further recovery against Authority, including, but not limited to, anticipated fees or profits on work not required to be performed.
33.4. Upon termination, Provider shall deliver to Authority all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement.

33.5. Authority shall have the power to suspend all or any portions of the services to be provided by Provider hereunder upon giving Provider 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, Provider's sole and exclusive remedy shall be an extension of time to its schedule.

34.0 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. (2016), 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.

35.0 WAIVER OF BREACH

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

36.0 ENTIRE AGREEMENT

This Agreement, including the referenced Exhibits and Attachments, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.
37.0 **AMENDMENTS**

The terms and provisions contained in 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) shall take precedence.

38.0 **MODIFICATIONS**

Modifications to the terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Amendment(s) or Supplemental Task Authorization(s). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Amendment(s) or Supplemental Task Authorization(s), the latest executed Amendment(s) or Supplemental Task Authorization(s) shall take precedence.

39.0 **SEVERABILITY**

If any word, phrase, sentence, part, subsection, or other portion of this Agreement, or any application thereof, to any person, or circumstances is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not have been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

40.0 **ACCEPTANCE**

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the parties in the space provided.
IN WITNESS WHEREOF, the parties have executed this Agreement effective the

day and year first written above.

ATTEST: LINDA DOGGETT
Clerk of the Circuit Court

By: ____________________________
Deputy Clerk

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

Chair or Vice Chair

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

By: ____________________________
Port Authority Attorney’s Office

PALMDALE OIL COMPANY, INC.

Signature

By: ____________________________
Printed Name

Title

Signed, Sealed and Delivered
in the presence of:

Witness

Witness

SEAL
EXHIBIT "A"

SCOPE OF SERVICES

Provider must supply and deliver Diesel and Unleaded Fuel to the Authority on an as needed basis, including during emergency situations, commencing on or after March 11, 2020.

Provider must supply fuel at competitive rates through a conditional contract with a proven supplier that has access to substantial volumes of petroleum products from nearby ports via contractual allocations or direct ownership and has delivery capabilities to ensure business continuity and prompt convenient service.

The following specifications apply:

Quantities listed on the bid form are approximate. The Authority reserves the right to purchase increased or decreased quantities, as needed to meet its needs. Authority may have future requirements for ethanol and bio-diesel. Pricing for ethanol and bio-diesel will be negotiated between the Provider and the Authority's Purchasing Manager as these products become available in our area should the Authority require them.

Projected Annual Requirements

The quantities listed below are approximate and are for the purpose of estimating supply requirements. The Authority reserves the right to order such quantities as may be required during the contract period, but no guarantee is made as to any minimum or maximum amounts.

<table>
<thead>
<tr>
<th>Product</th>
<th>Est. Annual Usage in Gallons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unleaded Gasoline</td>
<td>184,000</td>
</tr>
<tr>
<td># 2 Premium Ultra Low Sulfur Diesel, On Road (Non-Dyed)</td>
<td>28,500</td>
</tr>
<tr>
<td>#2 High Sulfur Diesel, Off Road (Dyed)</td>
<td>3,000</td>
</tr>
</tbody>
</table>

Authority reserves the right to modify the product specifications in order to comply with any future mandates.
Product, Locations, and Storage Capacities:

The following is a list of current and anticipated primary delivery locations within the boundaries of the Southwest Florida International Airport (RSW) and Page Field General Aviation Airport. The Port Authority reserves the right to add or delete delivery locations during the term of the contract. The average delivery size is 3,000 gallons of unleaded per week and 1,000 gallons of diesel bi-weekly at RSW and 500 gallons of unleaded and 500 gallons of diesel every five (5) weeks at Page Field.

Fuel Requirements:

A quality motor fuel is required; contaminated and/or degraded fuel will not be acceptable. The fuel to be provided under this bid must meet the following requirements:

1. The supplied gasoline shall be visually free of undissolved water, sediment, and suspended matter. It shall be clear and bright at ambient temperatures. Anti-knock index levels, defined as the average of the research octane number and motor octane number (R + M/2) shall be 87 octane. ASTM standard specifications for automotive gasoline (D439-84 or latest revised ASTM standard or other as dictated by the Port Authority on an on-going basis) shall prevail in case of dispute of quality. Ethanol rating/content: E10 is the maximum – E15 fuels are not acceptable under this bid.

2. The #2 diesel fuel supplied shall conform to ASTM D975-81 (or latest revised ASTM standard or other as dictated by the County on an on-going basis).

3. All fuel (gasoline and diesel motor fuels) shall be volatile hydrocarbon fuel, free from water and suspended matter, and suitable for use as a fuel in internal combustion engines.

4. All fuel and fuel products shall meet or exceed State of Florida specifications found at https://www.firules.org/gateway/ChapterHome.asp?Chapter=5J-21 or current State of Florida specifications as updated by the State.

5. Non-approved additives are prohibited from all products. Octane rating may not be achieved by the adding of an octane booster additive of any sort subsequent to the refinery process.

6. Certifications of Analysis certifying that all fuel and fuel products being purchased under any resulting term contract(s) meet the product specifications referenced in these technical specifications may be required at any time.
Order and Delivery Requirements:

When the fuel is delivered, a Port Authority employee may or may not be present. The delivering driver will meter the product into the tanks, sign and furnish a delivery ticket with the beginning and ending meter readings to the Authority. Optional metering arrangements may be considered if based upon State certified metering systems or State calibrated tanks.

Deliveries are expected within twenty-four (24) hours of the time the order is placed by the Port Authority, to assure continuity of on-going operations. If Provider cannot deliver the requested fuel, as specified in this Agreement, within 24 hours of receiving the order, Provider must notify the requesting department immediately by email. The Port Authority reserves the right to purchase fuel from the secondary vendor. Failure to notify the Port Authority or multiply instances of late or incorrect deliveries shall be grounds for immediate termination of this Agreement.

Deliveries shall be made to the Port Authority between the hours of 7:00 a.m. to 2:30 p.m., Monday through Friday unless other arrangements are made with the Port Authority Fleet Management. Deliveries made to in-ground tanks shall include removal of any accumulated or standing water in spill containment buckets to prevent the water from entering the tank when opening the fill cap.

There shall be no minimum quantities for tank wagon orders or any type of minimum order charges above those specifically stated in this Agreement. Deliveries will be made with trucks owned by the Provider. Common carrier deliveries may be accepted during times of emergency with prior approval of the Fleet Management. Billings for all deliveries shall be based on actual meter readings.

Emergency Situations:

Emergency situations include, but are not limited to, natural disasters such as hurricanes, tornados, windstorms, floods and fires as well as manmade events such as civil unrest and terrorist attacks.

Should the Provider fail to deliver gasoline and diesel fuel promptly when ordered, the requesting Authority reserves the right to procure the order elsewhere, in which event, the extra cost of procuring such fuel above the contract price may be charged against the Provider and may be deducted from any moneys due or which may become due.
Inability to Provide Product:

If circumstances arise where the Provider is unable to supply the requested product(s) within five (5) working days, the Port Authority may select an alternative supplier to provide the product on a temporary basis. In such cases, the extra cost of procuring such fuel above the contract price may be charged against the awarded vendor and may be deducted from any moneys due or which may become due.

The Provider shall advise the Port Authority Purchasing Manager in writing when a product is unavailable as soon as it receives such information. The successful bidder shall again notify the Port Authority Purchasing Manager when it is able to resume supplying the product.
EXHIBIT “B”

COMPENSATION SCHEDULE

Fuel prices shall be based upon "OPIS" (Oil Price Information Service), plus vendor markup amount per gallon to arrive at a firm fixed base price per gallon. Vendor(s) markup may include the vendor's profit, delivery costs, and other vendor overhead costs. The markup shall not change during the term of this Agreement. State and federal pollution taxes are not to be included in the markup offered and not indicated in the bid pricing.

Invoice prices shall be based on the OPIS rate in effect on the date of delivery. The OPIS daily rack average must be submitted for each delivery date. Delivery location, date, product(s), and the net quantity and cost of each product (with each federal, state, and local tax itemized separately) shall be itemized on all invoices. The Port Authority purchase order number shall also be on the invoice. Other than appropriate taxes, no other charges are permitted under this Agreement. Rather, these taxes are to be shown as itemized expenses within each invoice.

Each location listed in the Request for Bids shall be considered one stop. There shall be no additional cost to deliver fuel to separate tanks within the same location, to deliver two types of fuel to the same location, for a delivery of one (1) or two (2) types of fuel to two (2) different locations, or to deliver a tank wagon of one (1) or two (2) types of fuel to multiple locations.

### Fuel by Tank Wagon Delivery

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Product Type</th>
<th>Unit of Measure</th>
<th>Base Price (Per Gallon)</th>
<th>Vendor Markup Amount Per Gallon (Excluding Tax)</th>
<th>Total Cost Per (Gallon Column A+B)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>UNLEADED Gasoline E10 Delivered via Tank Wagon</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unleaded 87 Octane AKI</td>
<td>Per Gallon</td>
<td>1.6692</td>
<td>.1149</td>
<td>1.7841</td>
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<tr>
<td></td>
<td>Diesel Fuel Delivered via Tank Wagon</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>#2 Premium Ultra Low Sulfur Diesel, On Road (Non-Dyed)</td>
<td>Per Gallon</td>
<td>1.9195</td>
<td>.1249</td>
<td>2.0442</td>
</tr>
<tr>
<td>3</td>
<td>#2 High Sulfur Diesel, Off Road (Dyed)</td>
<td>Per Gallon</td>
<td>1.9107</td>
<td>.1339</td>
<td>2.0446</td>
</tr>
</tbody>
</table>

Total Cost Per Gallon $5.8729
EXHIBIT "D"
CERTIFICATE OF INSURANCE

In consideration of the premiums charged on the insurance policies shown in this certificate, this certificate of insurance is issued to the certificate holder shown below. This certificate does not amend, extend or alter the coverage afforded by the policies listed below except as shown below:

Name and Address of Agency

Name and Address of Insured

This is to verify that the insurance policies listed below have been issued to the insured and are in force at this time. It is agreed that none of these policies will be cancel or changed, except in the application of the aggregate liability limits provisions, so as to affect the insurance described by this certificate until after 30 days written notice of such cancellation or change has been delivered to the certificate holder at this address shown below. It is also agreed that 30 days written notice by the insurance companies listed above of their intent not to renew their policies listed below for the same coverage provided in this certificate will be given to the certificate holder at their address shown below. The policies shown in this certificate are primary to any insurance carried by the certificate holder.

<table>
<thead>
<tr>
<th>Company Letter</th>
<th>Type of Insurance</th>
<th>Policy Number</th>
<th>Policy Effective Date (mm/dd/yy)</th>
<th>Policy Expiration Date (mm/dd/yy)</th>
<th>ALL LIMITS IN THOUSANDS</th>
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<tbody>
<tr>
<td></td>
<td>General Liability</td>
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<tr>
<td></td>
<td>Commercial General Liability</td>
<td></td>
<td></td>
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<td>General Aggregate</td>
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<td></td>
<td>Claims Made</td>
<td></td>
<td></td>
<td></td>
<td>Products Comp/Op Aggregate</td>
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<tr>
<td></td>
<td>Occurrence</td>
<td></td>
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<td></td>
<td>Personal &amp; Advertising Injury</td>
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<td></td>
<td>Owners &amp; Contractors</td>
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<td></td>
<td>Each Occurrence</td>
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<tr>
<td></td>
<td>Protective</td>
<td></td>
<td></td>
<td></td>
<td>Fire Damage (Any One Fire)</td>
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<td></td>
<td>X.C.U. Coverage</td>
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<td></td>
<td>Medical Expense (Any One Person)</td>
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<td></td>
<td>Broad Form Property Damage</td>
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<td>Specific Project*</td>
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<td>Independent Contractors</td>
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<td>Automobile Liability</td>
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<td>Any Auto</td>
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<td>All owned Autos</td>
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<td>Scheduled Autos</td>
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<td>Hired Autos</td>
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<td>Non-Owned Autos</td>
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<td>Excess Liability</td>
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<td></td>
<td>Umbrella Form</td>
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<td>Other than Umbrella Form</td>
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<td></td>
<td>Claims Made</td>
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<td></td>
<td>Occurrence</td>
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<td></td>
<td>Workers’ Compensation and Employer’s Liability</td>
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<td>OTHER</td>
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☐ Contractual Liability Coverage

Description of Contract:

☐ The Certificate Holder has been named as an additional insured as respects the General, Automobile, and Excess Liability Policies described here.

☐ The General, Automobile and Excess Liability Policies described provide the severability of interest (cross liability) provision applicable to the named insured and the Certificate Holder.

☐ Copy of the agent’s license, or other proof of representation, with each insurance company, named above must be attached to this certificate.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

SPECIFIC PROJECT/LOCATION/VEHICLES/SPECIAL CONDITIONS:

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

Name and Address of Certificate Holder
Date Issued:
Authorized Representative:
Address:
Telephone #:
PLEAS READ CAREFULLY
CERTIFICATE OF INSURANCE EXPLANATION

The Certificate Holder (CH), requires the use of its Certificate of Insurance as evidence that the insurance requirements of the agreement have been complied with and will continue to be complied with as long as the agreement is in force. CH must rely on this certificate as proof of compliance with the insurance requirements agreed upon. The CH must be advised of cancellation or nonrenewal of the insurance coverage required or reduction in the coverage provided in compliance with the agreement as shown in the Certificate of Insurance. Thirty-day written notice of cancellation, nonrenewal, or reduction in coverage must be provided to the CH so that it can take proper action to protect itself.

Many Certificates of Insurance are received by the CH and many contain wording to the effect that the certificate is issued as a matter of information only and confers no rights upon the certificate holder. A common example of this unacceptable language is: should any of the above-described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the named holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

The CH must have the right of notice of cancellation, nonrenewal, and reduction of coverage, as this is part of the insurance requirements of the agreement entered into and to be relied upon by the CH as evidenced through its Certificate of Insurance.

The requirement that the authorized representative signing the Certificate of Insurance attach his agent's license with the insurance company or companies, or other acknowledgment by the insurance company or companies shown in the certificate, is to show proof to the CH that the person signing the certificate is legally authorized by the insurance company to so obligate them, as referred to in the certificate.

The CH must have positive evidence in the form of its Certificate of Insurance that the insurance requirements of the agreement entered into have been met and will continue to be met, without interruption, during the term of the agreement entered into unless thirty days written notice is given to it.

No activity shall begin until the CH's properly executed Insurance Certificate is received. Your cooperation in providing the CH with acceptable evidence of insurance requirements compliance, as agreed to in the agreement, will prevent confusion and delay in allowing the subject matter of this agreement to be accomplished.

The acceptance of delivery to the CH of any Certificate of Insurance required in any contract does not constitute agreement by the CH that the insurance requirements in the contract have been met or that the insurance policies shown in the certificate are in compliance with the contract requirements.

SEVERABILITY OF INTERESTS PROVISION

With respect to claims involving any Insured at interest hereunder, each such interest shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured. This agreement, however, shall not operate to increase the limits of the Insurance Company's liability.
1. REQUESTED MOTION/PURPOSE: Request Board permit transfer of $7,613.00 from fund 10501 Law Enforcement Trust Fund to 41200 for the purchase of a portable hardtop canopy.

2. FUNDING SOURCE: 10501 Law Enforcement Trust Fund

3. TERM: N/A

4. WHAT ACTION ACCOMPLISHES: Allows for the purchase of a portable hardtop canopy for airport police use.

5. CATEGORY: 12. Consent Agenda

6. ASMC MEETING DATE: 12/17/2019

7. BoPC MEETING DATE: 1/16/2020

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

9. REQUESTOR OF INFORMATION:
   - (ALL REQUESTS)
   - NAME: Gary Duncan
   - DIV: Aviation

10. BACKGROUND:
    At times, the Airport Police Department incurs investigative and administrative costs associated with bringing defendants to justice. Some of these costs are placed on the Authority. In accordance with State Statute Section 938.27, defendants may be ordered to reimburse the Authority for said costs. The creation of 10501 Law Enforcement Trust Fund was established as the repository of those reimbursed funds. Since the trust fund amount and use of the funds within it are not included in the annual LCPA budget, acceptance and use of these funds requires separate Board approval.

    The Airport Police Department requests the transfer of funds from the Law Enforcement Trust Fund to purchase a portable 14’x20’ hardtop canopy from American Cemetery Supplies, Inc. The portable canopy will be used at the outdoor rifle range located on LCPA property approximately ¼ mile southeast of Runway 24. The canopy will mitigate the conditions that contribute to heat exhaustion to our officers and range instructors while training and will protect electronics, firearms, and ammunition from the sun and rain.

    Staff recommends Board approve the transfer of $7,613.00 from 10501 Law Enforcement Trust Funds to be used to purchase the portable hardtop canopy.

Attachement:
(1) Portable Hardtop Canopy Quote

11. RECOMMENDED APPROVAL

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:
    - APPROVED
    - APPROVED as AMENDED
    - DENIED
    - OTHER

13. PORT AUTHORITY ACTION:
    - APPROVED
    - APPROVED as AMENDED
    - DENIED
    - DEFERRED to
    - OTHER
American Cemetery Supplies, Inc.
2001 Laigh Road
Portsmouth, VA 23701
Phone: (800) 515-0400 Fax: (757) 488-1589

Quotation# 014999

Bill To:
Lee County Port Authority Police Depart
11000 Terminal Access Road, Ste. 8671
Fort Myers, FL 33913

Ship To:
Lee County Port Authority Police Depart
Attn: Brandon Jacobsen, Patrol Sergeant
11000 Terminal Access Road, Ste. 8671
Fort Myers, FL 33913

Quote Date 10/23/2019

<table>
<thead>
<tr>
<th>Description</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tent Hard Top &quot;SteelPan&quot; w/Frame 14'x20'</td>
<td>$6,100.00</td>
</tr>
</tbody>
</table>

Comments

Thank you for calling American Cemetery Supplies. We appreciate the opportunity to provide this quote to you. Pricing is subject to change without notice. All items are FOB factory and shipping will be added on upon completion.

Terms NET 30

---

Date Printed 10/23/2019
If Total Price is not shown, see next page.
Page #1
1. **REQUESTED MOTION/PURPOSE:** Request Board approve the transfer of $5,530 from fund 10501 - Law Enforcement Trust Fund to 41200 for the purchase of a LiveScan Electronic Fingerprint System.

2. **FUNDING SOURCE:** 10501 Law Enforcement Trust Fund

3. **TERM:** N/A

4. **WHAT ACTION ACCOMPLISHES:** Allows for the purchase of a LiveScan Electronic Fingerprint System.

5. **CATEGORY:** 13. Consent Agenda

6. **ASMC MEETING DATE:** 12/17/2019

7. **BoPC MEETING DATE:** 1/16/2020

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

9. **REQUESTOR OF INFORMATION:**
   (ALL REQUESTS)
   NAME Gary Duncan
   DIV. Aviation

10. **BACKGROUND:**

    At times, the Airport Police Department incurs investigative and administrative costs associated with bringing defendants to justice. Some of these costs are placed on the Authority. In accordance with State Statute Section 938.27, defendants may be ordered to reimburse the Authority for said costs. The creation of 10501 Law Enforcement Trust Fund was established as the repository of those reimbursed funds. Since the trust fund amount and use of the funds are not included in the annual LCPA budget, acceptance and use of these funds requires separate Board approval.

    The Airport Police Department requests the transfer of funds from the Law Enforcement Trust Fund to purchase an IDIEMIA LiveScan electronic fingerprint desktop system. The LiveScan is an inkless, electronic fingerprint system that captures prints in a digitized format, which then can transmit the prints to the FDLE and FBI’s database.

    Approved individuals, such as LCPA employees and specified contractors authorized to access or come into contact with Criminal Justice Information (CJI), as obtained through the Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC), must be screened in accordance with the standards required by the Florida Department of Law Enforcement’s Criminal Justice Information Services Division. The LiveScan Desktop system will enable the Airport Police Department to obtain and process these required screenings directly, as opposed to sending all screening individuals to the Lee County Sheriff’s Office.

    Staff recommends Board approve the transfer of funds from the 10501 Law Enforcement Trust Fund to be used to purchase a LiveScan electronic fingerprint desktop system for $5,530.00

    Attachment: (1) IDEMIA Quote

11. **RECOMMENDED APPROVAL**

    | DEPUTY EXEC DIRECTOR | COMMUNICATIONS AND MARKETING | OTHER | FINANCE | PORT ATTORNEY | INTERIM EXECUTIVE DIRECTOR |
    |----------------------|-----------------------------|-------|---------|--------------|---------------------------|
    | Gary E. Duncan       | Victoria B. Moreland        | N/A   | Brian W. McGonagle | Gregory S. Hagen | Benjamin R. Siegel |

12. **SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:**

    - APPROVED
    - APPROVED as AMENDED
    - DENIED
    - OTHER

13. **PORT AUTHORITY ACTION:**

    - APPROVED
    - APPROVED as AMENDED
    - DENIED
    - DEFERRED to
    - OTHER
October 22, 2019

Phillip Murray
Director, Information Technology, LASO, GIS, CISSP
Lee County Port Authority
Lee County, FL
Tel: (239) 590-4541
Email: pwmurray@flylcpa.com

Reference No. IDFL-L101619-01A

IDEMIA is pleased to provide Lee County Port Authority with the following proposal for a IDEMIA LiveScan Station for submission to the Florida Department of Law Enforcement (FDLE) Applicant Database.

IDEMIA's fully integrated LiveScan solution provides Lee County Port Authority the following features and benefits:

- Single-source vendor for all components of the LiveScan solution, including the AFIS interface
- Full compliance with FDLE AFIS, FBI IAFIS/NGI EBTS and ANSI/NIST image standards
- Automatic fingerprint sequencing and duplicate print checking before scanning is completed, ensuring data integrity
- Quick check, review, and edit can be performed on each print
- All livescan configurations include on-site installation and 1 year warranty
IDEA’s on-going commitment to customer satisfaction and the delivery of the highest level of support in the industry is demonstrated by our placing resources in the field near the customer to provide on-site customer support.

Our warranty is 1 Year on-site for both parts and labor. Should Lee County Port Authority report a problem, IDEMA will dispatch a IDEMA Representative office to go on-site to resolve the problem as opposed to other vendors who send a “box with a replacement part”. We send a highly trained support representative to provide problem resolution. This ensures that Lee County Port Authority staff members are not burdened with the added task of “parts replacement”.

Solution Pricing

IDEA proposes the equipment and services described in Tables 1-2.

### Applicant Tenprint - Desktop

<table>
<thead>
<tr>
<th>Description</th>
<th>Unit Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>IDEMA LiveScan Desktop to include the following:</td>
<td>$5,530</td>
</tr>
<tr>
<td>* IDEMA LiveScan Application Software including print module</td>
<td></td>
</tr>
<tr>
<td>* FBI Appendix F Certified Tenprint 500 PPI Scanner</td>
<td></td>
</tr>
<tr>
<td>* Desktop computer, monitor, keyboard, mouse</td>
<td></td>
</tr>
<tr>
<td>* Mag-stripe reader for drivers’ license</td>
<td></td>
</tr>
<tr>
<td>* EFTS v.7 compliant NIST submission via SMTP and TCP/IP to FDLE</td>
<td></td>
</tr>
<tr>
<td>* Standard FDLE applicant profiles</td>
<td></td>
</tr>
<tr>
<td>* Installation</td>
<td></td>
</tr>
<tr>
<td>* Warranty: 1 Year On-site Advantage warranty, 9X5, Next-day on-site support and parts replacement</td>
<td></td>
</tr>
<tr>
<td>* Freight paid in continental U. S.</td>
<td></td>
</tr>
<tr>
<td><strong>Annual Maintenance – Options (to start after initial 1st Year Warranty)</strong></td>
<td></td>
</tr>
<tr>
<td>Annual Maintenance Help Desk Advantage Solution, Telephone technical support and advanced exchange parts replacement</td>
<td>$727</td>
</tr>
<tr>
<td>Annual Maintenance On-site Advantage Solution, 9X5, Next-day on-site response and parts replacement</td>
<td>$1,793</td>
</tr>
</tbody>
</table>

*Please see Table 3 Options for Card Printer pricing*

### Applicant Tenprint - Portable

<table>
<thead>
<tr>
<th>Description</th>
<th>Unit Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>IDEMA LiveScan Station Portable to include the following:</td>
<td>$7,070</td>
</tr>
<tr>
<td>* IDEMA LiveScan Application Software including print module</td>
<td></td>
</tr>
<tr>
<td>* FBI Appendix F Certified Tenprint 500 PPI Scanner</td>
<td></td>
</tr>
<tr>
<td>* Laptop computer</td>
<td></td>
</tr>
<tr>
<td>* Mag-stripe reader for drivers’ license</td>
<td></td>
</tr>
<tr>
<td>* EFTS v.7 compliant NIST submission via SMTP and TCP/IP to FDLE</td>
<td></td>
</tr>
<tr>
<td>* Standard FDLE applicant profiles</td>
<td></td>
</tr>
<tr>
<td>* Installation</td>
<td></td>
</tr>
<tr>
<td>* Warranty: 1 Year On-site Advantage warranty, 9X5, Next-day on-site support and parts replacement</td>
<td></td>
</tr>
<tr>
<td>* Freight paid in continental U. S.</td>
<td></td>
</tr>
<tr>
<td><strong>Annual Maintenance – Options (to start after initial 1st Year Warranty)</strong></td>
<td></td>
</tr>
<tr>
<td>Annual Maintenance Help Desk Advantage Solution, Telephone technical support and advanced exchange parts replacement</td>
<td>$727</td>
</tr>
<tr>
<td>Annual Maintenance On-site Advantage Solution, 9X5, Next-day on-site response and parts replacement</td>
<td>$2,293</td>
</tr>
</tbody>
</table>

*Please see Table 3 Options for Card Printer and Portable Carrying Case pricing*

Standard shipping is 30 days after IDEMA receipt of Purchase Order or as otherwise scheduled.

Annual Maintenance prices shown above are for Year 2 only. On-going maintenance pricing may escalate 5% per year, beginning in Year 3.
Options and Pricing
IDEMIA equipment options and pricing described in Table 3. Table 3. Options

<table>
<thead>
<tr>
<th>Description</th>
<th>Unit Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printer: Black &amp; White Tenprint Card, Duplexer, +1 additional tray</td>
<td>$1,325</td>
</tr>
<tr>
<td>UPS Power Supply</td>
<td>$187</td>
</tr>
<tr>
<td>Portable Carrying Case (for Table 2 LiveScan Portable)</td>
<td>$1,000</td>
</tr>
</tbody>
</table>

Customer Responsibilities
Lee County Port Authority is responsible for the following:
♦ Providing necessary facility resources required for equipment installation and operation including access, space, environmental control, electrical power and networking.
♦ To obtain and maintain the required transmission lines and hardware for remote communications to and from the necessary agencies.
♦ Obtaining all required authorizations for connecting to the FDLE AFIS.

For your reference, please contact Mr. Charlie Tyahur, FDLE, Tel: (850) 410-8412, Email: charltyahur@fdle.state.fl.us with any questions regarding connectivity or authorization.

Assumptions
In developing this proposal, IDEMIA has made the following assumptions:
♦ With the exception of the State AFIS, there are no external interfaces to support which includes but is not limited to records management system, booking system, mugshot system, etc. This includes any clearinghouses or other third party agencies.
♦ An inter-agency agreement between FDLE and Lee County Port Authority will be in place.
♦ Lee County Port Authority will provide all necessary communication to connect to FDLE. This includes, but is not limited to hubs, routers, modems, etc.
♦ On-site Installation Services will be scheduled after network connectivity to FDLE has been established and verified.

Additional engineering effort by IDEMIA beyond the scope of the standard product will be quoted based on current service rates in effect at the time of the change, plus any related travel or administrative expenses. Assistance with training and questions for the Lee County Port Authority’s database or any programming, scripting, or review of programs beyond work quoted above are excluded from this offer.

Prices are exclusive of any and all state, or local taxes, or other fees or levies. Customer payments are due to IDEMIA within 20 days after the date of the invoice.

Product purchase will be governed by the IDEMIA Agreement, a copy of which is attached for your convenience. Firm delivery schedules will be provided upon receipt of a purchase order. No subsequent purchase order can override such terms. Nothing additional shall be binding upon IDEMIA unless a subsequent agreement is signed by both parties.

IDEMIA reserves the right to substitute hardware of equal value with equal or better capability, based upon market availability. If, however such equipment is unavailable, IDEMIA will make its best effort to provide a suitable replacement.

Proposal Expiration: March 31, 2020
Purchase orders should be sent to IDEMIA by electronic mail, facsimile or U.S. mail. Please direct all questions and order correspondence, including Purchase Order, to:

Jayne Goodall
IDEMIA
5515 East La Palma Avenue, Suite 100
Anaheim, CA 92807
Email: jayne.goodall@morho.com | Tel: (714) 575-2956

We look forward to working with you.

Sincerely,

Michael Kato
Vice President of Public Security, State & Local Government
**Advantage Solution Support**

The following table provides a summary of the maintenance services and support available during warranty and following warranty expiration. Initial warranty period is 1 year from the date of installation.

<table>
<thead>
<tr>
<th>Support Features</th>
<th>Warranty</th>
<th>Post Warranty</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Software Support 9X5</strong></td>
<td>Included in Warranty</td>
<td>Available for purchase</td>
</tr>
<tr>
<td>Unlimited Telephone Technical Support</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>2 Hour Telephone Response Time</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Remote Dial-In Analysis</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Software Standard Releases</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Software Supplemental Releases</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Automatic Call Escalation</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Software Customer Alert Bulletins</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td><strong>Hardware Support — On-site 9X5</strong></td>
<td>Included in Warranty</td>
<td>Available for purchase</td>
</tr>
<tr>
<td>On-Site Response</td>
<td>24-hours</td>
<td>✔</td>
</tr>
<tr>
<td>On-Site Corrective Maintenance</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>On-Site Parts Replacement</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Preventive Maintenance</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Escalation Support</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Hardware Service Reporting</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Hardware Customer Alert Bulletins</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td><strong>Parts Support</strong></td>
<td>Included in Warranty</td>
<td>Available for purchase</td>
</tr>
<tr>
<td>Advanced Exchange Parts Replacement</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Telephone Technical Support for Parts Replacement</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Parts Customer Alert Bulletins</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td><strong>Software Uplifts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hours of Coverage Available up to 24 Hours Per Day, 7 Days/Week</td>
<td>Optional</td>
<td>Optional</td>
</tr>
<tr>
<td>1 Hour Telephone Response</td>
<td>Optional</td>
<td>Optional</td>
</tr>
<tr>
<td><strong>Hardware Uplifts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hours of Coverage Available up to 24 Hours Per Day, 7 Days/Week</td>
<td>Optional</td>
<td>Optional</td>
</tr>
<tr>
<td>Up to 4 Hours On-site Response</td>
<td>Optional</td>
<td>Optional</td>
</tr>
</tbody>
</table>

*Customer local time*
By signing this signature block below, Lee County Port Authority agrees to the terms and pricing stated in this proposal for the equipment as referenced above. My signature below constitutes the acceptance of this order and authorizes IDEMIA to ship and provide this equipment:

Signature Authorization for Order:

Signature

Name

Date

Total Purchase Price (including any Options):

Please provide Billing Address:

________________________________________________________

________________________________________________________

________________________________________________________

Check if Billing Address is same as Shipping Address: ☐

Please provide Shipping Address (if different from Billing Address):

________________________________________________________

________________________________________________________

________________________________________________________

PLEASE PROVIDE A COPY OF YOUR CURRENT TAX EXEMPTION CERTIFICATE (if applicable).
IDEMIA Short Form Sales Agreement

1. Scope. IDEMIA, LLC ("IDEMIA" or "Seller") having a place of business at 5615 East La Palma Avenue, Suite 100, Anaheim, California 92807 and ("Customer"), having a place of business at

   enter into this Sales Agreement ("Agreement"), pursuant to which IDEMIA, LLC will sell to Customer and Customer will purchase from Seller the equipment, parts, software, or services related to the equipment (e.g., Installation) described in Seller's Proposal or Letter Quote dated __. These terms and conditions, together with the Proposal or Quote, comprise the Agreement. Customer may indicate its acceptance of this Agreement by signing below or by listing a purchase order that refers to either the Proposal Quote or to a Customer solicitation to which the Proposal Quote responds. Only these terms and conditions apply to the transaction, notwithstanding any inconsistent or additional terms and conditions contained in the purchase order or Customer solicitation.

2. Price, Payment and Sales Terms. The Contract Price is U.S. $ __, excluding applicable sales, use, or similar taxes and freight. Seller will submit invoices to Customer for products when they are shipped and, if applicable, for services when they are performed. Customer will make payments to Seller within twenty (20) days after the invoice date. Unless otherwise stipulated with the Seller when an Order is accepted, the Equipment will be delivered by Seller "FOB" (Free Carrier), with named place being the Seller's premises where the Goods are being dispatched. (Incoterm 2010). Title to the Equipment will pass to Customer upon payment in full of the Contract Price as outlined above, except that title to Software will not pass to Customer at any time. Risk of loss will pass to Customer upon delivery of the Equipment to the Customer at the agreed named place of delivery in accordance with the Incoterm in the contract. Seller will pack and ship all Equipment in accordance with good commercial practices.

3. Software. If this transaction involves software, any software owned by Seller ("IDEMIA Software") is licensed to Customer solely in accordance with Seller's Software License Agreement ("SLA"), which is attached as Exhibit A and incorporated herein by this reference. Any software owned by a third party ("Non-IDEMIA Software") is licensed to Customer in accordance with the standard license terms, and restrictions of the copyright owner unless the owner has granted to Seller the right to sublicense its software pursuant to the SLA, in which case the SLA applies and the owner will have all rights and protections under the SLA as the Licensor. Seller makes no representations or warranties of any kind regarding Non-IDEMIA Software.

4. Express Limited Warranty and Warranty Disclaimer. IDEMIA Software is warranted in accordance with the SLA.

5. Delays and Disputes. Neither party will be liable for its non-performance or delayed performance if caused by an event, circumstance, or act of a third party that is beyond a party's reasonable control (a "Force Majeure"). Each party will notify the other if it becomes aware of a Force Majeure that will significantly delay performance. The parties will try to settle any dispute arising from this Agreement (except for a claim relating to intellectual property or breach of confidentiality through good faith negotiations. If necessary, the parties will escalate the dispute to their appropriate higher-level managers. If negotiations fail, the parties will jointly select a mediator to mediate the dispute and will share equally the mediation costs. Neither party will assert a breach of this Agreement without first giving the other party written notice and a thirty (30) day period to cure the alleged breach.

6. LIMITATION OF LIABILITY. Except for personal injury or death, Seller's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the purchase price of the products or services for which losses or damages are claimed. SELLER WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVIENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE PRODUCTS, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one year after the accrual of the cause of action. This limitation of liability survives the expiration or termination of this Agreement.

7. Confidential Information and Preservation of Proprietary Rights. The SLA governs software confidentiality. As to any other information marked "Confidential" and provided by one party to the other, the receiving party will maintain the confidentiality of the Information and not disclose it to any third party; take necessary and appropriate precautions to protect the Information; and use the Information only to further the performance of this Agreement. Confidential Information is and will remain the property of the disclosing party, and no grant of proprietary rights in the Confidential Information is given or intended. Seller, any copyright owner of Non-IDEMIA Software, and any third party manufacturer own and retain all of their proprietary rights in the equipment, parts, software, and nothing herein is intended to restrict their proprietary rights. Except as explicitly provided in the SLA, this Agreement does not grant any right, title or Interest in Seller's proprietary rights, or a license under any Seller patent or patent application.

8. Miscellaneous: Each party will comply with all applicable laws, regulations and rules concerning the performance of this Agreement or use of the products in the extent they do not conflict with the laws of the United States. This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State in which the products are installed to the extent they do not conflict with the laws of the United States. This Agreement constitutes the entire agreement of the parties regarding this transaction, supersedes all previous agreements and proposals relating to this subject matter, and may be amended only by a written instrument executed by both parties. Seller is not mailing, and Customer is not relying upon, any representation or warranty except those expressed herein. There are no other understandings which are not contained in this agreement.

IDEMIA, LLC ("SELLER")

Signed ____________________________
Name ____________________________
Title ____________________________
Date ____________________________

NAME ("CUSTOMER")

Signed ____________________________
Name ____________________________
Title ____________________________
Date ____________________________

Reference: IDFL-L-101619-04A Page 7 of 9
Idemia Identity & Security USA LLC • 5615 East La Palma Avenue, Suite 100, Anaheim CA 92807 • www.idemia.com
EXHIBIT A – SOFTWARE LICENSE AGREEMENT
In this Exhibit A, the term "Licensee" means IDEMiA, LLC, ("IDEMiA"); "Licensor" means the Customer; "Primary Agreement" means the agreement to which this exhibit is attached (IDEMiA Short Form Sales Agreement); and "Agreement" means this Exhibit and the applicable terms and conditions contained in the Primary Agreement. The parties agree as follows:

For good and valuable consideration, the parties agree as follows:

SECTION 1. DEFINITIONS
1.1 "Designated Products" means products provided by IDEMiA to Licensee with which or for which the Software and Documentation is Licensed for use.
1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software, including all physical or electronic media upon which such information is provided.
1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.
1.4 "Open Source Software Licenses" means the terms or conditions under which the Open Source Software is Licensed.
1.5 "Primary Agreement" means the agreement to which this exhibit is attached (IDEMiA Short Form Sales Agreement).
1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.
1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, derivative works, or any combination thereof; (ii) includes any modifications, enhancements, new versions and new releases of the software provided by IDEMiA; and (iii) may contain one or more licenses of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensed under the terms of this Agreement.

SECTION 2. SCOPE
IDEMiA and Licensee enter into this Agreement in connection with IDEMiA's delivery of certain proprietary Software or products containing embedded or pre-loaded proprietary Software, or both. This Agreement contains the terms and conditions of the license IDEMiA is providing to Licensee, and Licensee's use of the Software and Documentation.

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3.2 If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software License of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software License governing Licensee's use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, IDEMiA will provide the source code to Licensee.

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4.3 Unless otherwise authorized by IDEMiA in writing, Licensee will not, and will not allow or enable any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto another device. Licensee may temporarily transfer Software installed on a Designated Product to another device. If the Designated Product is returned to IDEMiA for maintenance or repair, Licensee may temporarily transfer Software to another device. Licensee must discontinue such temporary transfer when the original Designated Product is returned to IDEMiA for operation and the Software must be removed from the other device. Licensee must provide prompt written notice to IDEMiA at the time temporary transfer is discontinued.

SECTION 5. OWNERSHIP AND TITLE
IDEMiA, its licensees, and its suppliers retain all of their proprietary rights in any form and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, recompilations or derivative works from the Software or Documentation, whether made by IDEMiA or another party, or any improvements that result from IDEMiA's processes or provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by IDEMiA in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in IDEMiA, and Licensee will not have any shared development or other intellectual property rights.

SECTION 6. LIMITED WARRANTY; DISCLAIMER OF WARRANTY
6.1 If Licensee is not in breach of any of its obligations under this Agreement, IDEMiA warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a material defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by IDEMiA solely in its discretion. IDEMiA does not warrant that the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. IDEMiA makes no representations or warranties with respect to any third party software included in the Software.
6.2 IDEMIA's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, documented program or documentation errors or Security Vulnerabilities. If IDEMIA cannot correct the defect within a reasonable time, then at IDEMIA's option, IDEMIA will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and IDEMIA disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not IDEMIA knows, has reason to know, has been advised, or is otherwise aware of any such purposes or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, IDEMIA disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

SECTION 7. TRANSFERS
Licensee will not transfer the Software or Documentation to any third party without IDEMIA's prior written consent. IDEMIA's consent may be withheld at its discretion and may be conditioned upon transfer paying all applicable license fees and agreeing to be bound by this Agreement.

SECTION 8. TERM AND TERMINATION
8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by IDEMIA, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by IDEMIA.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to IDEMIA that all copies of the Software and Documentation have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to IDEMIA or destroyed by Licensee and are no longer in use by Licenses.

8.3 Licensee acknowledges that IDEMIA made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to IDEMIA for which monetary damages would be inadequate. If Licensee breaches this Agreement, IDEMIA may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossess all non-embodied Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

SECTION 9. UNITED STATES GOVERNMENT LICENSING PROVISIONS & RESTRICTED RIGHTS LEGEND
This Section applies if Licensee is the United States Government or a United States Government agency. Licensee's use, duplication, or disclosure of the Software and Documentation under IDEMIA's copyrights or trade secret rights is subject to the restrictions set forth in subparagraph (c)(1)(l) and (2) of the Commercial Computer Software—Restricted Rights clause at FAR 52.227-19 (JUNE 1987), if applicable, unless they are being provided to the Department of Defense. If the Software and Documentation are being provided to the Department of Defense, Licensee's use, duplication, or disclosure of the Software and Documentation is subject to the restrictions set forth in subparagraph (c)(1)(l) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (CCT 1988), if applicable. The Software and Documentation may or may not include a Restricted Rights notice, or other notice referring to this Agreement. The provisions of this Agreement will continue to apply, but only to the extent that they are consistent with the rights provided to the Licensee under the provisions of the FAR or DFARS mentioned above, as applicable to the particular procuring agency and procurement transaction.

SECTION 10. CONFIDENTIALITY
Licensee acknowledges that the Software and Documentation contain IDEMIA's valuable proprietary and Confidential Information and are IDEMIA's trade secrets, and that the provisions in this Primary Agreement concerning Confidential Information apply.

SECTION 11. GENERAL
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11.6. SURVIVAL. Sections 4, 5, 6.3, 7, 8, 9, 10, and 11 survive the termination of this Agreement.

Reference: IDFL-L101619-04A
Idemia Identity & Security USA LLC • 5615 East La Palma Avenue, Suite 100, Anaheim CA 92807 • www.idemia.com
LIVESCAN DEVICE VENDORS

- Provides livescan devices that meet the FDLE and FBI technical requirements for submission.

**NOTICE**

Please note that the information provided within this document includes a list of LIVESCAN DEVICE VENDORS who have voluntarily chosen to have their device (equipment) and electronic implementation submitted and evaluated by the Florida Department of Law Enforcement (FDLE) to verify compliance with both FDLE and federal Bureau of Investigation regulations and standards.

Inclusion in this list is NOT an endorsement or recommendation of one product or service over another and DOES NOT imply any ranking, or certification of the products or businesses themselves. The list is offered for informational purposes only, to indicate that technical evaluations for electronic submission of fingerprints to FDLE have been completed. The listing of these particular products or businesses should not be interpreted to mean that they have been approved by FDLE as being exclusive of any other products or businesses.

--- See Below ---
LIST OF APPLICANT LIVESCAN VENDORS AND SERVICE PROVIDERS WHO HAVE ESTABLISHED SUBMISSION APPROVAL FROM FDLE

Applicant type fingerprint cards may be submitted electronically to the Florida Department of Law Enforcement, for the purpose of conducting a criminal history check, IF the licensing or employing agency has agreed and made prior arrangements to receive electronic results from FDLE.

- If the licensing or employing agency has established a system to receive the electronic results, the applicant will be given instructions (from the agency) as to where to go and how to have the fingerprints taken and submitted from a livescan device.
- If an applicant wishes to submit fingerprints electronically but the agency did not give instructions, please contact that agency and request that the agency contact FDLE and make arrangements to receive electronic results. Individual applicants cannot be accommodated without the agency involvement.

Licensing or employing agencies MAY PURCHASE LIVESCAN DEVICES or MAY CONTACT SERVICE PROVIDERS to enable their applicants to electronically submit criminal history requests on their behalf.

- Listed below are those vendors who have been qualified to submit electronically to FDLE.
- Livescan vendors not listed here may request approval of their product or service by contacting FDLE at (850) 410-8161.

Information about verifying the identity of an individual and rolling quality fingerprints is available.

- The national Compact Council provides instruction on verifying a person’s identity which is crucial to the value of conducting a criminal history check at: https://www.fbi.gov/file-repository/identity-verification-program-guide-single-page.pdf/view
- The FBI’s website has information on taking legible fingerprints which may be useful in training persons who will be rolling prints for submission on inked fingerprint cards or through livescan systems at: https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/recording-legible-fingerprints
# Livescan Vendors

## 3M Cogent

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blake Godard</td>
<td>(614) 718-9691</td>
<td><a href="mailto:bgodard@mmm.com">bgodard@mmm.com</a></td>
</tr>
</tbody>
</table>

## Accurate-ID / iTouch Biometrics

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gerry Bornhofen</td>
<td>(847) 706-6789 x102</td>
<td><a href="mailto:gbornhofen@itouchbiometrics.com">gbornhofen@itouchbiometrics.com</a></td>
</tr>
</tbody>
</table>

## Accurate Biometrics, Inc.

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jarelin Ventura</td>
<td>(813) 586-3400</td>
<td><a href="mailto:tampa@accuratebiometrics.com">tampa@accuratebiometrics.com</a></td>
</tr>
</tbody>
</table>

## Advanced Livescan Technologies, Inc.

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kevin Burke</td>
<td>(440) 759-7028</td>
<td><a href="mailto:kb@advancedlivescantech.com">kb@advancedlivescantech.com</a></td>
</tr>
</tbody>
</table>

## Automation Designs and Solutions

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carolyn Rains</td>
<td>(601) 992-4121 x201</td>
<td><a href="mailto:crains@adsservicesinc.com">crains@adsservicesinc.com</a></td>
</tr>
</tbody>
</table>

## Biometric Information Management/I-3

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Adam Powers</td>
<td>(614) 456-1296 x108</td>
<td><a href="mailto:sales@biomgmt.com">sales@biomgmt.com</a></td>
</tr>
</tbody>
</table>

## Biometrics4all

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kyle McClure</td>
<td>(714) 568-9888 x3</td>
<td><a href="mailto:sales@biometrics4all.com">sales@biometrics4all.com</a></td>
</tr>
</tbody>
</table>

## Certiflix Live Scan

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Helmy El-Mangoury</td>
<td>(800) 710-1934</td>
<td><a href="mailto:helmy@certiflixlivescan.com">helmy@certiflixlivescan.com</a></td>
</tr>
</tbody>
</table>

## CrossMatch Technologies, Inc.

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Don Sutton</td>
<td>(647) 746-7559</td>
<td><a href="mailto:don.sutton@crossmatch.com">don.sutton@crossmatch.com</a></td>
</tr>
</tbody>
</table>

## DataWorks Plus

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rick Johnson</td>
<td>(864) 430-7981</td>
<td><a href="mailto:rjohnson@dataworksplus.com">rjohnson@dataworksplus.com</a></td>
</tr>
</tbody>
</table>
## Livescan Vendors

### First Advantage

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Jaskulsky</td>
<td>(443) 310-4978</td>
<td><a href="mailto:michael.jaskulsky@fadv.com">michael.jaskulsky@fadv.com</a></td>
</tr>
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</table>

### Fulcrum Biometrics

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phillip Moore</td>
<td>(210) 257-5615 x112</td>
<td><a href="mailto:phillip.m@fulcrumbiometrics.com">phillip.m@fulcrumbiometrics.com</a></td>
</tr>
</tbody>
</table>

### Idemia

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
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</thead>
<tbody>
<tr>
<td>Bob Taylor</td>
<td>(253) 495-2668</td>
<td><a href="mailto:robert.taylor@idemia.com">robert.taylor@idemia.com</a></td>
</tr>
</tbody>
</table>

### Identix Incorporated

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jeffrey Carroll</td>
<td>(952) 945-3350</td>
<td><a href="mailto:jeff.carroll@identix.com">jeff.carroll@identix.com</a></td>
</tr>
</tbody>
</table>

### Identification International, Inc.

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
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</thead>
<tbody>
<tr>
<td>Matt Valeri</td>
<td>(540) 953-1365</td>
<td><a href="mailto:mvaleri@ldintl.com">mvaleri@ldintl.com</a></td>
</tr>
</tbody>
</table>

### Innovative Biometric Systems

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leslie Rowe</td>
<td>(877) 932-2435 x6281</td>
<td><a href="mailto:leslie@fastfingerprints.com">leslie@fastfingerprints.com</a></td>
</tr>
</tbody>
</table>

### Insight

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Janis Mccoy</td>
<td>(813) 637-7048</td>
<td><a href="mailto:janks.mccoy@insight.com">janks.mccoy@insight.com</a></td>
</tr>
</tbody>
</table>

### MOSA Technology Solutions, LLC

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scott Clinton</td>
<td>(561) 379-5509</td>
<td><a href="mailto:scclinton@mosaglobal.com">scclinton@mosaglobal.com</a></td>
</tr>
</tbody>
</table>

### Printscan

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kristen Gerakaris</td>
<td>(631) 782-1700</td>
<td><a href="mailto:info@printscan.com">info@printscan.com</a></td>
</tr>
</tbody>
</table>

### Secure Outcome

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>PJ Lilly</td>
<td>(888) 670-8375</td>
<td><a href="mailto:pjlilly@secureoutcomes-hq.com">pjlilly@secureoutcomes-hq.com</a></td>
</tr>
</tbody>
</table>

Updated --- June 13, 2019
**Livescan Vendors**

<table>
<thead>
<tr>
<th>Contact Name</th>
<th>Phone Number(s)</th>
<th>E-mail Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tom Ayers</td>
<td>(703) 724-3626</td>
<td><a href="mailto:tom.ayers@telos.com">tom.ayers@telos.com</a></td>
</tr>
</tbody>
</table>

Updated — June 13, 2019
**BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY**

<table>
<thead>
<tr>
<th>1. REQUESTED MOTION/PURPOSE: Request the Board approve the purchase of one (1) 2019 John Deere 6120M Tractor with 30-foot telescoping boom and 60-inch radial cutting deck from Alamo Industrial utilizing the Florida Sheriffs Association Cooperative Purchasing Program (FSA19-Veh 17.0) for a total cost of $186,478.00.</th>
<th>5. CATEGORY: 14. Consent Agenda</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. FUNDING SOURCE: Capital Account VB5131541200.506410 in the amount of $186,478.00.</td>
<td>6. ASMC MEETING DATE: 12/17/2019</td>
</tr>
<tr>
<td>3. TERM: N/A</td>
<td>7. BoPC MEETING DATE: 1/16/2020</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. AGENDA:</th>
<th>9. REQUESTOR OF INFORMATION: (ALL REQUESTS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>_____ CEREMONIAL/PUBLIC PRESENTATION</td>
<td>NAME Gary Duncan</td>
</tr>
<tr>
<td>____ CONSENT</td>
<td>DIV. Aviation</td>
</tr>
<tr>
<td>____ ADMINISTRATIVE</td>
<td></td>
</tr>
</tbody>
</table>

**10. BACKGROUND:**

The Lee County Port Authority’s Maintenance Department maintains approximately 375 acres of retention ponds, canals and perimeter fence line, as well as 19 miles of access roadway that require slope mowing and brush cutting. The requested purchase will replace the single 2001 New Holland TS1000 tractor along with its boom and radial mower. The tractor due for replacement has operated, on average, 20 to 30 hours per week, 6 months per year, and has logged more than 10,000 hours of operating service during the last eighteen years. Since 2001, this piece of equipment has been rebuilt twice and has been out of service since March 2019. In its present state, the tractor would require a new transmission and a number of major mechanical repairs. Due to its age and the lack of available parts, staff recommends the purchase of a replacement tractor, boom and radial cutting deck.

The procurement method staff selected to purchase the replacement tractor will be through the Florida Sheriffs Association’s (FSA) Cooperative Purchasing Program. The FSA program combines the purchase requirements of public entities in order to leverage the benefits of volume purchases, obtain delivery and supply chain advantages, and reduce administrative time and costs. Cost analysis indicates savings of approximately $3,400 by contracting through the Florida Sheriff’s Association cooperative purchasing program.

Staff requests the Board approve the purchase of one (1) 2019 John Deere 6120M Tractor with 30-foot telescoping boom, 60-inch radial cutting deck, telescoping mirrors, air suspension seat, 22 ply tires, and radio from Alamo Industrial

**11. RECOMMENDED APPROVAL**

<table>
<thead>
<tr>
<th>DEPUTY EXEC DIRECTOR</th>
<th>COMMUNICATIONS AND MARKETING</th>
<th>OTHER</th>
<th>FINANCE</th>
<th>PORT ATTORNEY</th>
<th>INTERIM EXECUTIVE DIRECTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gary E. Duncan</td>
<td>Victoria B. Moreland</td>
<td>N/A</td>
<td>Brian W. McGonagle</td>
<td>Gregory S. Hagen</td>
<td>Benjamin R. Siegel</td>
</tr>
</tbody>
</table>

**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)

utilizing the Florida Sheriffs Association’s Cooperative Purchasing Program (FSA19-Veh 17.0) for a total cost of $186,478.00, which includes a $7,000 trade-in for the 2001 New Holland Tractor and boom mower.

Attachments:
1. FSA Contract 19-VEH17.0
2. Florida Sheriff Contracts Quote
FLORIDA SHERIFFS ASSOCIATION
Cooperative Purchasing Program
Contract Terms and Conditions Rev 8/7/2019

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1.0 GENERAL CONDITIONS

1.01 BID CORRESPONDENCE

All correspondence regarding this bid should be directed to the Florida Sheriffs Association “FSA”, using the information shown above. Please be sure to reference the bid number and your contact information.

The contacts for this bid are:

- Annette Grissom, FSA Cooperative Purchasing Program Coordinator
  E-mail: agrissom@flsheriffs.org
  Phone: 850-877-2165 ext. 5811
  Fax: 850-878-5115

- Craig Chown, FSA Cooperative Purchasing Program Manager
  E-mail: cchown@flsheriffs.org
  Phone: 850-877-2165 ext. 5833
  Fax: 850-878-5115

Communication for this Invitation to Bid should be identified by contract number and title and directed to:

Florida Sheriffs Association
Attn: Cooperative Purchasing Program Coordinator
2617 Mahan Drive
Tallahassee, FL 32308
E-mail: CPP@flsheriffs.org
1.02 PURPOSE

The Florida Sheriffs Association invites interested Bidders, including Motor Vehicle Manufacturers and Dealers/Certified Representatives to submit responses in accordance with these solicitation documents. The FSA Cooperative Purchasing Program will conduct the solicitation process and administer the resulting contract. The purpose of this bid is to establish a twelve (12) month contract with manufacturers and manufacturer’s authorized vendors for the purchase of vehicles and equipment on a “no trade-in basis”.

1.03 TERM OF CONTRACT

This contract shall remain in effect for one (1) year from date of contract execution by the FSA, and may be renewed by mutual agreement, at the sole option and discretion of the FSA, pursuant to the terms of Section 3.04.

The term of contract begins October 1, 2019 and ends September 30, 2020.

Contract extensions will only be executed when the FSA determines, based on then-existing conditions, that it is in the best interest of the FSA and the purchasers to do so.

1.04 ESTIMATED QUANTITIES

In FY 2017-18, eligible users purchased approximately 8,330 vehicles and equipment from this contract. These estimated figures are given as a guideline for bidders preparing bids.

Quantities provided do not guarantee or imply future contract sales. Neither the FSA nor any eligible user is obligated to place any order for a given amount subsequent to the award of this bid solicitation.

1.05 SHERIFF AS COUNTY CONSTITUTIONAL OFFICER

The Offices of the Sheriff in the State of Florida are constitutional offices of the State of Florida. Each has the authority either individually or collectively to execute contracts for all goods and services for the proper conduct of that office. Section 30.53, Florida Statutes, exempts the sheriffs’ offices from the provisions of the Florida Statute that would otherwise require sealed and competitive bidding procedures.

It is our practice to give consideration to the prices offered, but the Office of the Sheriff is not required by law to accept the lowest priced proposal and may reject any or all of the proposals without recourse. Bidders are solely responsible for their own bid preparation costs and nothing in this solicitation in any way obligates the participating sheriffs’ offices for any payment for any activity or costs incurred by any bidder in responding to this solicitation.

1.06 FUNDING

In the case of certain purchasers, including state agencies, funds expended for the purposes of the contract must be appropriated by the Florida Legislature, the individual participating agency or the agency’s appropriating authority for each fiscal year included within the contract period. For such agencies, their
performances and obligations to pay for products or services under any resulting contract, or purchase order, are contingent upon such an annual appropriation by the Legislature, individual agency or by the appropriating authority. Therefore, any contract or purchase order with such an agency shall automatically terminate without penalty or termination costs in the event of non-appropriation.

1.07 CURRENCY

All transaction amounts, bids, quotes, provisions, payments or any part of this contract relating to currency are to be made in United States Dollar.

1.08 GENERAL DEFINITIONS

The terms used in this contract are defined as the following:

a. Bidder: A proposer or enterprise that submits a formal offer to the FSA Cooperative Purchasing Program Administrator in accordance with the Contract Terms and Conditions.

b. Bid System: The online forum used for the submission of electronic bids and review of bid results for the specifications connected to this Invitation to Bid. VendorLink is the software used for this bid.

c. Dealer: A manufacture’s certified representative authorized by the manufacturer to market, sell, provide, and service the vehicles/equipment for the FSA Cooperative Purchasing Program. Dealers may be vendor-owned and controlled, in whole or in part, or independently owned and controlled.

d. Florida Sheriffs Association Cooperative Purchasing Program (FSA): The entity that administers the Invitation to bid and contract administration functions for this contract.

e. End User: A term used to distinguish the person who ultimately uses or is intended to use a product or for whom a product is designed for use.

f. Factory: Refers to the manufacturer produced products.

g. Fleet Advisory Committee (FAC): An employee of a sheriff’s office or other local governmental agency, or any other person who FSA identifies as subject matter expert who assists with the development of bid specifications and evaluation of bid responses. The Fleet Advisory Committee makes recommendations to the FSA and is not responsible for final awards.

h. Invitation to Bid: A competitive solicitation and award process established through the issuance of an invitation to vendors, dealers and manufacturers to submit a price offer on a specific product to be provided. This term shall include the bid specifications available to bidders on the bid system and references to solicitation documents. The term shall not include request for proposals, request for quotes, request for letters of interest, or the solicitation of purchase orders based on oral or written quotations.

i. Manufacturer: The original producer or provider of vehicles or equipment offered on this contract.
Manufacturer’s Suggested Retail Price (MSRP): Manufacturer’s Suggested Retail Price (MSRP) represents the Manufacturer’s recommended retail selling price, list price, published list price, or other usual and customary price that would be paid by the purchaser. The following are acceptable sources of current MSRP and MSRP Lists for use in submission of the bid solicitation and the resulting contract:

1. Manufacturer’s Computer Printouts: Ford - “Dora”; General Motors - “GM Autobook”; or approved equivalent
3. Manufacturer’s Annual U.S. Price Book
4. Manufacturer’s official website

k. Non-Scheduled Options: Any optional new or unused component, feature or configuration that is not included or listed in the base vehicle specifications or options.

l. Production Cutoff: A date used by manufacturers to notify dealers that the factory has reached maximum capacity for orders or are discontinuing the production of a vehicle or equipment. Vehicle manufacturers use this term when referring to any given model year for production.

m. Published List Price: A standard “quantity of one” price currently available to government and educational purchasers, excluding cooperative or volume discounts.

n. Purchaser: A Purchaser is an entity that seeks to obtain vehicles or equipment off this contract by meeting the eligible user criteria or with vendor approval.

o. Purchase Order: A request for order from a purchaser to an awarded vendor for an item that has been awarded on this Contract. Purchaser orders placed using this contract formalize the terms and conditions of this contract under which a vendor furnishes vehicles or equipment to a purchaser.

p. Third Party Supplier: Businesses external to a bidder or vendor that provide products and services which contribute to the overall finished vehicle or equipment. Third Party Suppliers are contractors under the direction and responsibility of the bidder or vendor.

q. Vendor: The bidder that has been awarded and agrees to provide vehicles or equipment that meet the requirements and base specifications. The vendor must agree to the contract terms and conditions of the contract before being awarded to the contract.

r. Vendor Installed: A product or service provided by the vendor or other third party; not the factory.

1.09 ELIGIBLE PURchasERS OF CONTRAct

Awarded bids, or contract prices, will be extended and guaranteed to the Florida Sheriffs Association, any unit of local government, political subdivision or agency of the State of Florida. This includes, but is not limited to counties, municipalities, sheriffs’ offices, clerks, property appraisers, tax collectors, supervisors of elections, school boards or districts, water management districts, police and fire departments, emergency response units, state universities and colleges, or other state, local or regional government entities within the State of Florida.
All purchasers are bound by state law, local ordinances, rules and regulations for purchases made under this contract. Participating agencies cannot guarantee any order other than those ordered by the individual agency.

In addition, bids can be extended and guaranteed to other entities approved by manufacturers to participate in this contract, which can include out of state sales. Vendors that wish to extend contract pricing to entities other than those defined here are governed by their manufacturer’s agreement, and must agree to the terms and conditions of this contract.

1.10 LEGAL REQUIREMENTS

Federal, State, county laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the bidder of applicable legal requirements will in no way be a cause for relief from responsibility.

1.11 PATENTS & ROYALTIES

The bidder, without exception, shall indemnify and hold harmless the FSA and its employees from liability of any nature or kind, including costs and expenses for, or on account of, any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the FSA or a purchaser.

If the bidder uses any design, device or materials covered by letters, patent, or copyright, it is mutually understood and agreed, without exception, that the bid prices shall include all royalties or costs in any way arising, directly or indirectly, from the use of such design, device, or materials in any way involved in the work.

1.12 FEDERAL AND STATE STANDARDS

It is the intent of FSA that all specifications herein are in full and complete compliance with all federal and State of Florida laws, requirements, and regulations applicable to the type and class of commodities and contractual services being provided.

In addition, any applicable federal or State legal or regulatory requirements that become effective during the term of the Contract, regarding the commodities and contractual services’ specifications, safety, and environmental requirements shall immediately become a part of the Contract. The vendor shall meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the vendor shall contact the FSA immediately.

The bidder shall obtain and pay for all licenses, permits and inspection fees for this bid submission and contract.

1.13 UNDERWRITERS’ LABORATORIES

Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall be Underwriters’ Laboratories, or U.L., listed or re-examination listing where such has been established by U.L. for the item(s) offered and furnished.
1.14 AMERICANS WITH DISABILITIES ACT

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, or any accommodation to review any document or participate in any FSA sponsored proceeding, please contact FSA Human Resources at (850) 877-2165 five days in advance to initiate your request. TTY users may also call the Florida Relay Service at 711.

1.15 REASONABLE ACCOMMODATION

In accordance with the Title II of the Americans with Disabilities Act, any person requiring an accommodation at the Bid opening because of a disability must contact the FSA Human Resources at (850) 877-2165.

1.16 MINORITY BUSINESS ENTERPRISE (MBE)

The Florida Sheriffs Association policy is that Minority Business Enterprises (MBE) shall have the opportunity to participate in this invitation to bid. Such process would be for supplying goods and services to FSA and Purchasers.

1.17 ANTI-DISCRIMINATION

The bidder certifies that he/she is in compliance as applicable by federal or state law with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin.

1.18 BEST COMMERCIAL PRACTICES

The apparent silence of this specification and any supplemental specifications as to any details or the omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices, size, and design are to be used.

All workmanship is to be first quality. All interpretations of this specification shall be upon the basis of this statement.

1.19 PUBLIC ENTITY CRIMES (PEC)

In accordance with the Public Entity Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list maintained by the State of Florida Department of Management Services following a conviction for public entity crimes 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 public entity, may not be awarded or perform work as a Vendor, supplier, Sub-Vendor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
1.20 TAX EXEMPTION

All State and Federal tax exemptions applicable to the units of local government of the State of Florida will apply, and appropriate certifications furnished. Purchasers shall comply with all federal, state and local tax requirements.

The Florida Sheriffs Association is a 501(c)3 organization and is exempt from all Federal Excise and State Taxes. State Sales Tax and Use Certificate Number is 85-8012646919C-3.

1.21 TAXES

Customers making a purchase pursuant to the awarded bid are generally exempt from Federal Excise and State Sales Tax. It is the responsibility of the vendor to verify that the purchaser is exempt by obtaining the purchaser’s Federal Excise and State Taxes and Use Certificate Number.

1.22 ORDER OF PRECEDENCE IN THE EVENT OF CONFLICT

In the event of conflict, the conflict may be resolved in the following order of priority (highest to lowest):

1. Addenda to Contract Terms and Conditions, if issued
2. Contract Conditions
3. Addenda to Bid Specifications, if issued
4. Bid Specifications
5. Bidder Instructions
6. General Conditions

1.23 COMMUNICATIONS

Communications between a proposer, bidder, lobbyist or consultant and FSA are limited to matters of process or procedure and shall be made in writing to the contact persons identified in Section 1.01 of this procurement.

Bidders should not rely on representations, statements, or explanations other than those made in this Bid or in any written addendum to this Bid, and no oral representations, statements, or explanations shall be deemed to bind the FSA or eligible users.

1.24 CLARIFICATION AND ADDENDA

Any questions or clarifications concerning the Invitation to Bid shall be submitted to FSA by e-mail to CPP@flsheriffs.org with the bid title and number referenced on all correspondence. Final questions must be received by the date for Request for Clarification stated on the Bid Calendar. Questions and answers will be posted to the FSA Cooperative Purchasing Program website on the date indicated on the Bid Calendar.

Interpretation of the specifications or any solicitation documents will not be made to the bidder verbally, and if any verbal clarifications are provided they are without legal effect.

Questions received after the cone of silence date listed on the bid calendar will not be addressed. The FSA reserves the right to address technical questions.
The FSA shall issue a Formal Addendum if substantial changes which impact the submission of bids are required. Any such addenda shall be binding on the bidder and shall become a part of the solicitation document. In the event of conflict with the original specifications, addenda shall govern to the extent specified. Subsequent Addenda shall govern over prior Addenda only to the extent specified.

FSA will make every attempt to e-mail updates to registered bidders. However, posting to the FSA website or the bid system constitutes proper notice of addenda.

The bidder shall be required to acknowledge receipt of the Formal Addendum by signing in the space provided. Failure to acknowledge Addendum shall deem the bid non-responsive; provided, however, that pursuant to section 2.26, the FSA may waive this requirement in its best interest. The FSA will not be responsible for any explanation or interpretation made verbally or in writing except those made through the posting of a Formal Addendum.

The bid submission constitutes acknowledgment of addenda to the specifications. Bids that fail to account for the specification addenda shall be determined to be nonresponsive; however, that pursuant to section 2.26, the FSA may waive this requirement in its best interest.

After the start of the contract term, FSA will notify all vendors of any addenda and will require acknowledgement of the new terms and conditions. If the vendor does not agree to the new terms and conditions, the vendor’s award can be removed or replaced by another vendor or qualified responsive bidder.

1.25 SIGNED BID CONSIDERED AN OFFER

The signed Bid shall be considered an offer on the part of the bidder, which offer shall be deemed accepted upon approval by the FSA and in case of default on the part of successful bidder, after such acceptance, the FSA may procure the items or services from other sources. The bid submission must be signed by an authorized representative.

An electronic signature may be used and shall have the same force and effect as a written signature.

1.26 ASSIGNMENT OF CONTRACT

No right or interest in this Contract may be assigned, transferred, conveyed, sublet or otherwise disposed of, without prior written consent of the FSA.

If the original vendor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor-in-interest must perform all obligations under this Contract. FSA reserves the right to reject the acquiring entity as vendor. A change of name agreement will not change the contractual obligations of the vendor.

1.27 TERMINATION OF PRODUCT LINE

If a vendor terminates a product line (manufacturer or brand), the vendor is required to notify the FSA within 10 business days of the decision not to retain the product line.

In the event a manufacturer reassigns the product line to an alternate vendor, the manufacturer and the vendor are required to immediately notify the FSA in writing of the change within 10 business days.
confirming the reassignment. If the vendor is not already an approved FSA vendor, the vendor is required to apply to the FSA to become an approved vendor prior to conducting any qualified sales. The vendor and the manufacturer are required to honor the contract pricing and all of the applicable terms and conditions throughout the remaining term of the contract.

1.28 METHOD OF AWARD

The award is made to responsive and responsible bidders. FSA uses its discretion in determining if bids meet the requirements of this solicitation.

The FSA reserves the right to make multiple awards within a specification, if deemed in the best interest of the FSA and the purchasers.

Awards will be posted on the FSA website according to the date posted in the bid calendar.

1.29 DEMONSTRATION OF COMPETENCY

Bidders must be able to demonstrate a good record of performance for a reasonable period of time, and have sufficient financial support, equipment and organization to ensure they can satisfactorily execute the services if awarded a contract under the terms and conditions herein stated.

The terms “equipment” and “organization" as used herein shall be construed to mean a fully equipped and well established company in line with the best business practices in the industry and as determined by the FSA.

The FSA may consider any evidence available regarding the financial, technical and other qualifications and abilities of a Bidder, including past performance with the FSA in making the award.

The FSA may require Bidders to show proof that they have been designated as authorized representatives of a manufacturer or supplier which is the actual source of supply. In these instances, the FSA may also require information from the source of supply regarding the quality, packaging and characteristics of the products. Any conflicts between this material information provided by the source of supply and the information contained in the bid submission may render the bid nonresponsive.

Pre-award inspection of the Bidder’s facility may be made prior to the award of contract. Bids will only be considered from firms which are regularly engaged in the business of providing the goods or services as described in this Bid.

Information submitted in the bid may not be plagiarized and, except in the case of materials quoted from this solicitation or developed by the manufacturer, must be the original work of the individual or company that submits the bid for evaluation.

1.30 VENDOR ABILITY TO PERFORM

During the contract period, FSA may review the vendor’s record of performance to ensure that the vendor is providing sufficient financial support, equipment and organization.
If the FSA determines that the vendor no longer possesses the financial support, equipment and organization in order to comply with this section, FSA has the authority to immediately terminate the contract awarded.

By responding to this procurement the vendor warrants that, to the best of his or her 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 vendor’s ability to satisfy the obligations of the Contract. The vendor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statues, or on any similar list maintained by any other state or the federal government. The vendor shall immediately notify the FSA and purchaser in writing if its ability to perform is compromised in any manner during the term of the contract.

1.31 **FINANCIAL RESPONSIBILITY**

Bidder affirms by the signature on the contract signature page that the bidder:

- Has fully read and understands the scope, nature, and quality of work to be performed or the services to be rendered under this bid, and has the adequate facilities and personnel to fulfill such requirements;

- Accepts the financial responsibility associated with this bid, and declares that he or she has the access to capital (in the form of liquidity or credit lines) in order to meet the financial demands of such award; and

- Has assessed the financial responsibility required to serve the contract as bid, including such details as the obligations to perform all specifications bid, zones bid, and quantities that could be ordered, as well as timing of payment from purchasers, which can be 45 days from receipt of invoice.

1.32 **QUALITY AND SAFETY**

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality, and highest grade workmanship that meet or exceed federal safety standards.

Products requiring certification should require certification of options in cases where non-certified options could result in the decertification of the original product or warranty. In all cases where options are not certified, the Vendor must disclose to the end user that the non-certified options are not required to be certified. All options must meet or exceed federal safety standards.

1.33 **NONCONFORMANCE**

Items may be tested for compliance with specifications. Items delivered that do not conform to specifications may be rejected and returned at the vendor's expense. Items not meeting the specifications and items not delivered within a reasonable period of time after expected delivery date may be purchased outside of the FSA contract.

Any violation of these stipulations may also result in:
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- Vendor’s name being removed from the awarded vendor list.
- FSA and purchasers being advised not to do business with vendor.

1.34 GRATUITIES

Proposers shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the FSA, for the purpose of influencing consideration of this bid.

1.35 TIE BIDS

FSA has the right to award multiple bidders the primary or alternate award in the event of a tie.

In the event the FSA desires to break tie bids, and both businesses have qualifying drug-free work programs, the award will be made using the following criteria:

- Bidder Within the State of Florida
- Vendors performance record with purchasers
- Coin Toss

1.36 RIGHT TO AUDIT

Vendor shall establish and maintain a reasonable accounting system that enables FSA to readily identify Vendor’s sales.

FSA and its authorized representatives shall have the right to audit and to make copies of all related records pertaining to this contract, including all government sales and eligible user information whether kept by or under the control of the vendor, including, but not limited to those kept by its employees, agents, assigns, successors, sub-vendors, or third party suppliers in whatever form they may be kept—written or electronic. Such records shall include, but not be limited to:

- Accounting records, including paid vouchers, cancelled checks, deposit slips, ledgers, and bank statements;
- Written policies and procedures;
- Subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.);
- Original estimates or work sheets;
- Contract amendments and change order files;
- Insurance documents; or
- Memoranda or correspondence.

Vendor shall maintain such records during the term of this Contract and for a period of three (3) years after the completion of this Contract. At the vendor’s expense and upon written notice from FSA, the vendor shall provide such records for inspection and audit by FSA or its authorized representatives. Such records shall be made available to FSA during normal business hours within three business days of receipt of the written notice. FSA may select the vendor’s place of business or offsite location for the audit. The FSA may also request the vendor provide requested records via e-mail.
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Vendor shall ensure FSA has these rights with Vendor’s employees, agents, assigns, successors, and third party supplier and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Vendor and any Sub-Vendors to the extent that those subcontracts or agreements relate to fulfillment of the Vendor’s obligations to FSA.

Professional fees, personnel costs and travel costs incurred by FSA under its authority to audit and not addressed elsewhere will be the responsibility of the FSA. However, if the audit identifies under reporting, overpricing or overcharges (of any nature) by the vendor to FSA or a customer in excess of three percent (3%) of the total contract billings, the vendor shall reimburse FSA for the total costs of the audit not to exceed $5,000. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, FSA may recoup all the costs of the audit work from the vendor.

Any adjustments or payments that must be made as a result of any such audit or inspection of the vendor’s invoices or records shall be made within a reasonable amount of time (not to exceed 60 days) from presentation of FSA’s findings to Vendor.

FSA has the right to assess damages or seek reimbursements or refunds based on audit results.

1.37 LIABILITY, INSURANCE, LICENSES AND PERMITS

Where vendors are required to enter or go onto FSA or purchaser property to deliver materials or perform work or services as a result of a bid award, the vendor will assume the full duty, obligation and expense of obtaining all necessary licenses, permits and insurance and assure all work complies with all applicable county and municipal code requirements. The vendor shall be liable for any damages or loss to the FSA or purchaser occasioned by negligence of the vendor or any person the vendor has designated in the completion of the contract as a result of the bid.

1.38 BID BONDS, PERFORMANCE BONDS, CERTIFICATES OF INSURANCE

Bid Bonds, when required, shall be submitted with the bid in the amount specified in Bidder Instructions.

After acceptance of bid, the FSA will notify the successful bidder to submit the applicable certificates of insurance in the amounts specified in the Bidder Instructions and/or Insurance Checklist.

Purchaser may request a performance bond from a vendor. Performance Bonds are recommended with pre-payment and will be at the expense of the requesting agency. Purchasers should determine the best practice in comparing performance bond expense against any prior discounts that may be available.

1.39 ELIMINATION FROM CONSIDERATION

This Invitation to Bid shall not be awarded to any person or bidder who has outstanding debts to the FSA, whether in relation to current or previous bid awards or for other business purposes.

1.40 COLLUSION

Collusion is a non-competitive secret or sometimes illegal agreement between rival bidders that attempts to disrupt the contract process equilibrium. Collusion involves people or companies that would typically compete, but are conspireng or working together in which the outcome results in an unfair bid advantage.
The parties may collectively choose to agree to increase or decrease its product base price in one or more zones to maximize awards thus denying the public a fair price.

Examples of Bid Collusion:

- Cover bidding: a competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.

- Bid suppression or withdrawal: a competitor agrees not to bid or to withdraw a bid from consideration.

- Market sharing: a competitor agrees to submit bids only in certain geographic areas or only to certain public organizations.

- Bid rotation: competitors agree to take turns at winning business while monitoring their market shares to ensure they all have a predetermined market share.

Bidders or vendors who have been found to have engaged in collusion will be considered nonresponsive, and will be suspended or barred from bid participation. Any contract award resulting from collusive bidding may be terminated for default. Further, any collusion that is detected by the FSA may be reported to relevant law enforcement and/or prosecutorial agencies.

Bidders may submit multiple bids without conflict of collusion if the bid submitted is not from the same manufacturer and product line. Dealers which share the same ownership may submit multiple bids without conflict of collusion if the bidders are not in the same region featuring the same manufacturer and product line.

1.4 DEFAULT

Failure or refusal of a bidder to execute a contract upon award or withdrawal of a bid before such award is made, may result in forfeiture of any bid surety required that is equal to damages incurred by the FSA there from, or where surety is not required, failure to execute a contract as described above may be grounds for removing the bidder from the awarded vendor’s list.

In case of default on the part of awarded bidder, the FSA may take necessary steps to otherwise procure the products sought, including but not limited to procuring the products or services from the next highest ranked bidder or from other sources. A defaulting bidder may be held liable for costs incurred by the FSA in procuring replacement products.

1.42 PROTESTS AND ARBITRATION

Options are for informational purposes only and will not serve as a basis for protest.

Any person who is adversely affected by the decision or intended decision to award shall file a “Notice of Protest” in writing to the FSA within three (3) business days after the posting of the Intent to Award and shall file a formal written protest within five (5) business days after filing the Notice of Protest. Failure to file both a notice of protest and a formal written protest within the above referenced timelines shall constitute a waiver of proceedings.
The burden is on the party protesting the award of the bid to establish grounds for invalidating the award(s). The formal written protest must state with particularity the facts and law upon which the protest is based. Failure to do so will result in a denial of protest. Formal written protest which states with particularity the facts and law upon which the protest is based will be reviewed by FSA legal counsel for legal soundness and validity, and corrective action will be taken as needed contingent upon the validity of such claims. However, any additional time required and cost incurred by the FSA to substantiate a protesting party’s claim(s) beyond the normal scope of its legal review due to the vague or inconclusive nature of the protesting party’s filing will be reimbursable to the FSA and deducted from the protesting party’s bond or security which must accompany their filing.

Any bidder who files an action protesting a decision or intended decision pertaining to this contract shall post a bond, cashier’s check or money order payable to the Florida Sheriffs Association in the amount equal to ten percent of the product line being protested. The bond, cashier’s check or money order must be filed at the time of filing the formal written protest or within the five (5) business day period allowed for filing the formal written protest. FSA will provide the amount required within two (2) business days of the notice of protest received. This bond or security will be conditioned upon the payment of all costs which may be adjudicated against the protesting party in a court of law and/or to reimburse the FSA for additional legal expenses incurred and required to substantiate the protesting party’s claim(s). Failure to post the bond or security requirement within the time allowed for filing will result in a denial of protest. The filing of the protest shall not stay the implementation of the bid award by the Florida Sheriffs Association.

Should the unsuccessful bidder(s) decide to appeal the decision of the FSA, they shall file a notice to FSA within three (3) business days of the FSA bid protest decision regarding their intent to request arbitration. A demand for arbitration with the American Arbitration Association’s (AAA) commercial panel under its rules and regulations must be made within ten (10) business days of the FSA bid protest decision. Any person who files for an arbitration with the AAA shall post with the Florida Sheriffs Association at the time of filing the formal written arbitration request, a bond, cashier’s check or money order payable to the Florida Sheriffs Association in the amount equal to ten percent of the product line being protested. This amount will be the same amount as the FSA provided at the time of filing the initial protest. Failure to provide written notice to FSA, file a demand for arbitration with the AAA, or failure to post the required bond and security requirement within the specified timelines shall constitute a waiver of arbitration proceedings. By responding to this procurement the bidder expressly agrees to the use of mandatory binding arbitration to resolve any appeals of the decision of the FSA, and any claims arising from or in any way relating to the procurement process, and expressly waives any and all rights that it may otherwise have to pursue such claims in any other forum, judicial or otherwise.

If the party filing for arbitration does not prevail, it shall pay all costs, legal expenses and attorney fees of the prevailing party incurred in connection with the arbitration. However, if the filing party prevails, the parties shall share equally the fees and expenses of the arbitration and AAA and each shall bear the cost of their own attorney fees. The filing for arbitration shall not stay the implementation of the bid award by the Florida Sheriffs Association.

### 1.43 NONPERFORMANCE

By virtue of the bid submission, bidder acknowledges its obligation to sell vehicles and equipment in all zones for which it is awarded. Failure of the bidder to comply with these requirements may result in the imposition of liquidated damages of up to $1,000 per vehicle/equipment, which amount the vendor agrees is reasonable, or probation, suspension, termination or a combination thereof from current and future bids at the FSA’s discretion.
The vendor shall at all times during the contract term remain responsive and responsible. In determining vendor’s responsibility, the FSA shall consider all information or evidence that demonstrates the vendor’s ability or willingness to fully satisfy the requirements of the solicitation and the contract.

Vendors that are not in compliance with any of the provisions of this contract can be assessed liquidated damages, suspended or terminated from the contract. The FSA at its sole discretion may remove a noncompliant vendor from future competitive bid solicitations; or take other actions including suspension from the contract until compliance issues are resolved, limit current or future vendor participation by specifications or zones, or other actions as determined by FSA at its sole discretion.

At FSA’s discretion, vendors may be required to develop corrective action plans to address contract compliance. Failure to abide by corrective action plans will result termination from the existing contract and future competitive bid solicitations at the discretion of the FSA.

In situations where there is evidence that the vendor has engaged in egregious breaches of the contract with respect to either the FSA and/or the purchaser, the contract can be terminated and the vendor will be removed from future solicitations for a period of up to three (3) years, or a permanent ban from the bid process at the sole discretion of FSA.

Specific conditions for termination include, but are not limited to; failure to perform, refusal to accept orders during the contract period while manufacturer orders are still being accepted for current model year or the new year if the vehicle is price protected by the factory, charging amounts exceeding MSRP on factory or vendor installed items and packages, requiring the purchase of additional options over and above the base vehicle as a condition of acceptance of order, providing aftermarket options where factory options are available without the consent of the purchaser, any misrepresentation of optional equipment or service as being factory that fails to meet the definition as described in this document, and any other practice deemed to be inconsistent with the intent of the contract.

Any vendor presented with a valid purchase order is required by this contract to accept such purchase order and deliver the product. Orders must be fulfilled if the vehicle or equipment is a base model or whether it includes options. The vendor must deliver this product if they were awarded the contract – regardless of profit or loss.

Failure to deliver the vehicles or equipment may result in the purchaser seeking damages for the difference of cost to issue the exact same order with another vendor plus any legal fees and damages that may be incurred in the process to facilitate a completed order. Additionally, FSA may seek damages for nonpayment of administrative fees, to which FSA is entitled, according to Section 3.28 and any attorney’s fees incurred in the recovery of these damages.

All terms and conditions are applicable throughout the term of the contract and not any given Year, Make or Model.

1.44 SEVERABILITY

In the event any provision of this contract is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the contract which shall remain in full force and effect and enforceable in accordance with its terms.
1.45 TERMINATION FOR CAUSE

If through any cause within the reasonable control of the vendor, it shall fail to fulfill in a timely manner, or otherwise violate any of the terms of this contract, the FSA shall have the right to terminate the services remaining to be performed. Written notice of the deficiencies shall be given to the vendor and unless the deficiencies are corrected within 10 business days, the Contract may be terminated for cause immediately. The right to exercise the option to terminate for cause shall be in the sole discretion of the FSA, and the failure to exercise such right shall not be deemed to constitute a waiver of this right.

In that event, the FSA shall compensate the successful bidder in accordance with the contract for all services performed by the bidder prior to termination, net of any costs incurred by the FSA as a consequence of the default.

Notwithstanding the above, the vendor shall not be relieved of liability to the FSA for damages sustained by the FSA by virtue of any breach of the contract by the vendor, and the FSA may reasonably withhold payments to the vendor for the purposes of off set until such time as the exact amount of damages due the FSA from the vendor is determined.

1.46 TERMINATION WITHOUT CAUSE

The FSA can terminate the contract in whole or part without cause by giving written notice to the vendor of such termination, which shall become effective 30 days following receipt by vendor of such notice.

In that event, all finished or unfinished documents and other materials shall be properly delivered to the FSA.

The vendor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the contract, if any. The vendor shall not be entitled to recover any lost profits that the vendor expected to earn on the balanced of the Contract or cancellation charges.

Any payments to the vendor shall be only to the total extent of the FSA liability for goods or services delivered prior to the date of notice to terminate the contract.

1.47 CONTRACT ADVERTISMENT AND USE OF FSA LOGO

The CPP logo is an official logo of the Florida Sheriffs Association designed to promote the program. The logo may be used by vendors in accordance with this policy. Use of the logo is limited to the original version received from the FSA. Modifications are not permitted.

Methods of use include, but are not limited to:

- Electronic mediums such as websites, digital marketing campaigns, social media and e-mail; or
- Print media such as forms, marketing campaigns, business cards, posters, banners, brochures, flyers and postcards.

Vendors may request the logo by contacting cpp@flsheriffs.org, and should include a brief description of how the vendor intends to use the logo.

The official FSA sheriff's star and wreath logo may not be used without prior written permission.
2.0 BIDDER INSTRUCTIONS

2.01 BIDDER QUALIFICATIONS

In order for bids to be considered, bidders who are not currently parties to the existing contract, or who have previously had their participation limited by the FSA, must provide the following material at the time the mandatory qualifying documents are due. FSA reserves the right to accept this information up and until the final award. The purpose of requesting this information is to demonstrate that they are qualified to satisfactorily perform as an awarded vendor.

The bidder shall provide information as on the Bidder Qualifications Form:

- Bidder company name and parent company, if applicable
- Complete business address
- State of incorporation
- Length of time in business
- Names and contact information for key personnel
- Dun & Bradstreet number: By providing this number, the bidder agrees and authorizes FSA to obtain their financial information/reports from these entities
- Identify a minimum of three contracts of similar size and scope
- Identify a minimum of three references for vehicle or equipment sales to government agencies
- Any contracts the bidder has been disqualified from, terminated from or found in default on, to include the reason for disqualification, termination or default

2.02 LICENSING/FACILITIES

Bidders are required to possess a Florida Motor Vehicle Dealer’s License in order to bid on any motor vehicle. Bidders must maintain a repair/warranty facility within the State of Florida to provide sales and service for the vehicles and equipment bid.

If a bidder does not maintain a facility to perform warranty work or repair service within the state of Florida, the bidder must provide a detailed plan at the time of bid submission as to how the bidder would service Florida purchasers if awarded the contract. This Service Standard Plan must include:

- Whether the warranty service provider is approved by the manufacturer;
- Estimated quantities sold per item bid;
- If the company plans to contract out for service a copy of the service agreement; and
- Zone specific service plans to include:
  - Response time to initial call from purchaser,
  - Number of personnel available to service the contract,
  - Qualifications of personnel providing warranty work, and
  - Any additional information that would detail how warranty service would be provided.

The sufficiency of Service Standard Plan will be evaluated by the FSA during the bid evaluation.

The FSA reserves the right to periodically request additional or updated information from a bidder regarding the repair/warranty facility during the solicitation and the term of the contract, if awarded. The FSA may also exercise discretion in examining such facility as deemed necessary.
2.03 INSURANCE AND INDEMNIFICATION

Vendor shall be fully liable for the actions of its agents, employees, partners, or third party suppliers and shall fully indemnify, defend, and hold harmless the Florida Sheriffs Association, the participating agencies, and their officers, agents, and employees from suits, actions, damages, and costs of every name and description, including legal counsels’ fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by bidder, its agents, employees, partners, or third party suppliers; provided, however, that the bidder shall not indemnify for that portion of any loss or damages resulting directly from the negligent acts or omissions of the Florida Sheriffs Association and participating agencies or proximately caused by intentional wrongful acts or omissions of the Florida Sheriffs Association and participating agencies.

Vendor’s obligations under the above paragraph with respect to legal action are contingent upon the Florida Sheriffs Association and/or participating agencies giving the bidder (1) written notice of any action or threatened action, and (2) the opportunity to take over and settle or defend any such action at bidder’s sole expense. Vendor shall not be liable for any cost, expense or compromise incurred by the Florida Sheriffs Association, or participating agencies, in any legal action without bidder’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

The vendor shall be responsible for the work and every part thereof, and for all materials, tools, appliances and property of every description, used in connection with this particular project.

The vendor shall specifically and distinctly assume, and does so assume, all risks of damage or injury to property or persons used or employed on or in connection with the work and of all damage or injury to any person or property wherever located, resulting from any action or operation under the contract or in connection with the work. It is understood and agreed that at all times the vendor is acting as an independent contractor.

The vendor at all times during the full duration of work under this contract, including extra work in connection with this project shall meet the requirements of this section.

The vendor shall maintain automobile liability insurance including property damage covering all owned, non-owned or hired automobiles and equipment used in connection with the work. The vendor shall maintain comprehensive general liability insurance and general aggregate insurance in the amount and coverage levels specified on the Insurance Checklist. The vendor shall maintain insurance to cover garage operations in the amount specified on the Insurance Checklist.

No change or cancellation in insurance shall be made without 30 days written notice to the FSA.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and these companies must have a rating of at least B+: VI or better per Best’s Key Rating Guide, latest edition.

Copies of original signed Certificates of Insurance, evidencing such coverages and endorsements as required herein shall be filed within five days after public bid opening. The certificate must state Bid Number and Title. Vendor may not begin performance under the contract until such Certificates have been approved by the FSA.
Upon expiration of the required insurance, the vendor must submit updated certificates of insurance for as long a period as any work is still in progress.

It is understood and agreed that all policies of insurance provided by the vendor are primary coverage to any insurance or self-insurance the FSA possesses that may apply to a loss resulting from the work performed in this contract.

All policies issued to cover the insurance requirements herein shall provide full coverage from the first dollar of exposure. No deductibles will be allowed in any policies issued on this contract unless specific safeguards have been established to assure an adequate fund for payment of deductibles by the insured and approved by the FSA.

The liability insurance coverage shall extend to and include the following contractual indemnity and hold harmless agreement:

The vendor hereby agrees to indemnify and hold harmless the FSA, a 501(c)3, its officers, agents, and employees from all claims for bodily injuries to the public and for all damages to the property per the insurance requirement under the specifications including costs of investigation, all expenses of litigation, including reasonable legal counsel fees and the cost of appeals arising out of any such claims or suits because of any and all acts of omission or commission of any by the vendor, his agents, servants, or employees, or through the mere existence of the project under contract.

The foregoing indemnity agreement shall apply to any and all claims and suits other than claims and suits arising out of the sole and exclusive negligence of the FSA, its officers, agents, and employees, as determined by a court of competent jurisdiction.

The vendor will notify the insurance agent without delay of the existence of the Hold Harmless Agreement contained within this contract, and furnish a copy of the Hold Harmless Agreement to the insurance agent and carrier.

The vendor will obtain and maintain contractual liability insurance in adequate limits for the sole purpose of protecting the FSA under the Hold Harmless Agreement from any and all claims arising out of this contractual operation.

The vendor will secure and maintain policies of third party suppliers. All policies shall be made available to the FSA upon demand. Compliance by the vendor and all third party suppliers with the foregoing requirements as to carrying insurance and furnishing copies of the insurance policies shall not relieve the vendor and all third party suppliers of their liabilities and obligations under any section or provisions of this contract. Vendor shall be as fully responsible to the FSA for the acts and omissions of the third party suppliers and of persons employed by them as he is for acts and omissions of persons directly employed by the vendor.

Insurance coverage required in this contract shall be in force throughout the contract term. The required Insurance Checklist summarizes the bidder’s insurance obligations, if awarded.

The FSA can request and the vendor shall furnish proof of insurance within seven days of receipt of the written request from FSA. Should the vendor fail to provide acceptable evidence of current insurance during the contract term, the FSA shall have the right to consider the contract breached and justifying the termination thereof.
If bidder does not meet the insurance requirements; the FSA may consider alternate insurance coverage.

2.04 SPECIFICATIONS

All units covered by this Contract and the specifications shall be the manufacturer’s current basic production model, and shall, as a minimum, be equipped with all standard factory equipment in accordance with the manufacturer’s latest literature unless otherwise noted in the bid document. If awarded, bidders must supply a unit that either meets or exceeds all the requirements included in the applicable detailed specifications.

The bid specifications are contained on the VendorLink bid system. The FSA base specifications are incorporated in this document by reference.

All bidders will be required to provide information requested on the price sheets or may have their bid rejected.

All vehicles, equipment, and options provided must be designed, constructed, and installed to be fully suitable for their intended use and service.

2.05 FIXED PRICES

If the bidder is awarded a contract under this Invitation to Bid, the prices quoted by the bidder at the time of bid submission shall remain fixed and firm during the term of this contract, unless otherwise addressed in a contract extension or price adjustment as provided in this Contract.

2.06 SEALED BIDS

For purposes of this solicitation, a sealed bid is considered a bid submitted using VendorLink.

2.07 EXCEPTIONS, OMISSION AND ERRORS

Any exceptions, deviations, or contingencies a bidder may have to specifications or Contract Conditions, Section 3.0 of this document, must be documented in bidder’s submission. Exceptions to the specifications at the time of the bid submission shall reference the specification or item number and a written explanation for the request for exception. At FSA’s discretion, exceptions, deviations, or contingencies to the specifications or Contract Conditions stipulated by the bidder may result in disqualification of a bidder’s submission.

Specifications are based on the most current manufacturer literature available. Bidders should immediately notify the FSA of any inaccuracies in the specifications or required submittal documents. All notifications of inaccuracies must be in writing and timely submitted.

Failure of a bidder to comply with these provisions will result in bidders being held responsible for all costs required to bring the vehicle into compliance with the contract specifications.
Exceptions, deviations or contingencies to the General Conditions or Bidder Instructions, other than those determined to constitute minor irregularities and waived by the FSA pursuant to Section 2.26, may be cause for the rejection of a bidder’s submission.

2.08 MISTAKES

Bidders are expected to examine the specifications, delivery schedules, bid prices and all information pertaining to servicing this contract before submitting a bid. Failure to do so will be at the bidder’s risk.

2.09 EQUIVALENTS

Bidders must first request approval from the FSA before submitting a bid that includes an equivalent that will supplement an item on the base specification. The FSA will determine whether the proposed equivalent is equal to or exceeds the quality, design and construction than the intended replacement item in the base specification.

Bidders must provide the manufacturer name and model number (or product identifier) of each equivalent when seeking approval. Complete, descriptive, technical literature should demonstrate that the equivalent conforms with specific replacement item.

If the equivalent is approved, the bidder must include the supporting material in the bid submission. Bids will not be considered without this information. If a bid uses equivalents without prior approval, the bid will be deemed nonresponsive.

Vendors offering alternate makes and manufacturers of vehicles or equipment that are not specifically identified in the bid, cannot publish or offer the unapproved equivalents. Offerings of this nature will cause the bid to be rejected. If such offerings are identified after the award has been granted, the offerings, specification or entire award can be removed by the FSA.

When selling equivalents, vendors must disclose to the purchaser that an approved equivalent is being offered.

2.10 MANDATORY PRE-BID MEETING

Prospective bidders are required to attend the mandatory Pre-Bid Meeting. The Pre-Bid Meeting is designed for vendors, the Fleet Advisory Committee and the FSA to meet in person to clarify questions on the terms and conditions and to confirm all base specifications are correct.

Bidders have the opportunity to suggest technical modifications or corrections before the specifications are finalized. Questions relating to the specifications, the bid process, or award can be asked at the Pre-Bid Meeting.

FSA reserves the right to grant attendance exceptions to the mandatory meeting if the bidder has requested prior authorization, signs a memo of understanding to agree to meet all the terms and conditions without exception and further waives their right to protest the bid process in its entirety or any portion thereof.
2.11 QUALIFICATION

Prospective bidders are required to complete the qualification forms by the date listed on the Bid Calendar. A bidder becomes a qualified bidder if they comply with this section and Section 2.10, Mandatory Pre-Bid Meeting.

Qualification forms include:
- Drug-Free Workplace Form,
- Insurance Checklist,
- Manufacturer Authorization Form for each manufacturer bid for Contract FSA19-VEH 17.0 only,
  - Manufacturer Authorization Forms are not required for Contract FSA19-VEL27.0.
- Emergency Vehicle Technician (EVT) Certification, if bidder is offering emergency lighting and sirens, and
- Qualified Bidder documentation as required in Section 2.01

The qualification forms are located on the bid system.

2.12 PRICES QUOTED

Prices submitted as indicated in the sealed bid are final. Bidders acknowledge that prices quoted will be valid for a period of sixty (60) calendar days from the date of bid opening. Each specification, make, and model must be priced and bid separately.

Prices quoted in the bid submission should reflect the final amount the bidder can expect to receive for payment for the specifications bid for the duration of the contract award, unless otherwise addressed by a contract extension or price adjustment as provided in the contract. These prices must be inclusive of all of the components included in the base specification.

Prices bid, including options, must include the administrative fee FSA charges to administer the contract, as outlined in Section 3.28.

Prices must be Free On Board (FOB) destination.

Once awarded, the vendor has the authority to offer discounts for prompt payment. Cash or quantity discounts offered will not be a consideration in determination of award of the bid.

2.13 OPTION PRICING

The bidder shall offer discount below Manufacturer’s Standard Retail Pricing (MSRP) or manufacturers published list price for any factory options included in the bid submission and quotes to purchasers, if awarded.

Options are intended to add or delete equipment or features from the base specification. Options can provide an upgrade or downgrade to a manufacturer’s model, such as a slightly different engine size or horsepower, and should not be made available for purchase separate from the base vehicle or equipment. Bidders shall NOT use options to create a vehicle or equipment that is entirely different than the FSA base specification or are available as another specification bid on this ITB.
Bidder must use proper factory codes for all factory options. Options available through the factory must be bid and supplied to purchaser as “factory” options, unless otherwise requested in writing by the purchaser.

The FSA has the discretion to disqualify bidders if the option pricing is excessive.

Option pricing will include all costs of labor associated with the option and cost of labor should not be listed separately within the bid.

If a bidder will offer registration and title services as a fee for service, the bidder must include the administrative fee as a separate option (i.e. line item) for each item bid, see Section 3.23 for additional details. Government imposed fees should not be included in this option pricing.

No other additional charges or fees are admissible.

For purposes of this bid, Emergency Lights and Sirens will require a separate pricing sheet upload in the bid system. See Section 2.14 for details on emergency lights and sirens.

If options are not available as a stand alone option, the bidder must indicate in their bid submission any option requiring the purchase of other options, and also indicate options that are a part or dependent of another option. Factory package options are allowable under this contract. Factory package options must be included in the options within the bid document and detailed specifically as to what components the package includes.

When calculating the price for a manufacturer’s option requested in this bid that is not listed as an option in the manufacturer’s order guide (i.e. model or engine upgrade), the bidder must calculate the option price as the net difference between vendor cost on the representative base vehicle and the total MSRP of the requested option modifying the vehicle. A bidder may bid less than this price, but at no time charge more than the calculation provided here.

The use of options to facilitate the sale of an alternate manufacturer’s product which is outside the scope of the written base specification will be determined nonresponsive and the bid will be rejected in whole or part by the FSA.

Example: Bidder CANNOT include option upgrades that result in the selling of a vehicle or truck on one specification that is offered as a separate specification in the bid solicitation. For example, a Vendor who is awarded the bid for 25,500 lb. GVWR Cab & Chassis cannot upgrade this item through an add option to a 30,000 lb. GVWR Cab & Chassis in order to circumvent the bid award winner for the 30,000 lb. GVWR Cab & Chassis.

Purchasers are encouraged to negotiate option pricing with vendors. Discounts can be provided beyond option prices listed in the contract. The additional discounts for each add option shall be decided by the vendor.
Option Upload
The bid system will receive option information from bidders through a predefined Excel file upload. The information required for the bid submission of the options include:

- Item number (FSA specification number)
- Order code (Manufacturer order code)
- Description
- Price

The options will correspond to the specification or item number. Multiple options may be listed for specification or item number bid. Therefore, any bidders that do not indicate the correct item number that corresponds to the correct option code, price and description will not have options displayed for the item bid. If option pricing is not uploaded correctly, FSA may require bidders to correct the formatting of the options, but pricing may not be modified. Failure of the bidder to make corrections may cause the bid to be rejected.

If the bidder wishes to offer credit to the purchaser for an option that is standard on the FSA base specification, the bidder should include the word “Credit” at the beginning of the Description field, and continue to describe the option being credited. For example, “Credit: one key fob” and enter the price the bidder will credit the purchaser. The bid system will not allow for negative numbers, and any option upload with negative numbers will not be accepted.

2.14 EMERGENCY LIGHTS AND SIRENS

Under Florida Statute 316.003(1), authorized emergency vehicles are defined as:

Vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Health, the Department of Transportation, and the Department of Corrections as are designated or authorized by their respective department or the chief of police of an incorporated city or any sheriff of any of the various counties.

Bidders that will provide or contract to provide emergency light and siren installation must also submit Emergency Vehicle Technician Certifications for the individuals working for the bidder or the designated third-party supplier who will perform the installation. FSA reserves the right to accept certifications up and until final award.

Vendors that will install emergency lights and sirens are required to provide and install products that are Society of Automotive Engineers (SAE) certified. SAE Certifications must include Class 1, Class 2 and Class 3 in order to be eligible for participation in the Contract. If a lighting or siren product installed on an emergency vehicle is not SAE Certified, the vendor can be found in default of the Contract.

Prices submitted for emergency lights and sirens shall include all applicable government imposed fees.

Labor may be charged for the installation of emergency lights and sirens. Labor rates must be disclosed as part of the bid submission.
For vehicles that are manufactured with emergency lights and sirens, including motorcycles, bidders may not charge for labor, emergency lights or sirens that come from the factory equipped with these features as standard equipment.

Bid Submission of Emergency Lights and Sirens
Bidders will be asked to provide pricing for emergency lights and sirens by submitting a pricing sheet. The bid system will receive pricing through a standardized Excel file. The pricing sheet will include:

- Group
- Order code
- Description
- Price (part only)
- Labor hours
- Labor cost per hour

2.15 SUBMITTAL OF BID

Bidders are required to submit a bid using the FSA bid system, VendorLink. Bid submissions include pricing for the base specification, option descriptions and pricing, and any applicable lighting/siren pricing, as well as all other required documentation.

The bid must be received by the date and time specified on the Bid Calendar. Failure to meet all submission requirements by the date indicated on the Bid Calendar will result in rejection of the bid.

Bid System: VendorLink
Bidders must submit their bid electronically using the on VendorLink bid system, which is located at https://www.myvendorlink.com. Bids not submitted within VendorLink will be rejected. Bidders are encouraged to participate in training provided for VendorLink.

User names and passwords will be issued to qualified after registering in VendorLink, qualified bidders will be invited to bid.

Prices are to be rounded to the nearest whole dollar (i.e. $10, not $10.05). The bid system allows for cents, however the bid evaluation is based on the whole dollar. If a bidder submits bid pricing using cents, the following formula will be applied:

- $.01-.49 will be rounded down to the prior dollar bid (e.g. $50.49 = $50)
- $.50-.99 will be rounded to the next dollar (e.g. $50.50 = $51)

Bid Submission
To ensure correct bid submittal and formatting, Bidders shall:

1. Submit bid electronically through VendorLink for the applicable bid.
2. Upload files only in MS Word (.doc or .docx), Excel (.xls or .xlsx), and PowerPoint (.ppt or .pptx); Adobe Portable Document Format (.pdf); or Compressed File (ZIP) formats.
3. Enable printing on files submitted.
4. Separate and identify each part of the submission (i.e. document type, form type, content type) with a divider/separation page.)
5. Bids must be input into the standardized format in VendorLink.
6. Contact VendorLink technical support at support@evendorlink.com, if technical difficulties arise during bid submission.
7. Follow all instructions outlined in this Invitation to Bid and provide all requested information.

The bid submitted in VendorLink shall include the following documents:

- Executed Contract Signature Page
- Completed pricing sheet
  - Pricing sheet must be downloaded from VendorLink, completed, and uploaded back into VendorLink. Modifications to the format of the predefined Excel spreadsheet are prohibited, and will cause the bid to be rejected.
- Build sheet for each item bid
  - A build sheet is a document from the bidder or manufacturer that confirms that the vehicle or equipment bid matches the FSA base specification. If using the manufacturer’s print-out, the document shall indicate the manufacturer’s base model code and display the standard equipment required to provide the base vehicle or equipment as outlined in the FSA base specification. For example, manufacturer print-outs can include Ford – Dora, General Motors – GM Autobook. Carbook Pro build sheets are acceptable. If vendor-installed aftermarket components are used to meet the base specification and these components must be identified on the build sheet. Build sheets for each item bid must be compiled into a single .pdf document. Build sheets should be in numerical order by specification, clearly identifiable by specification or item number, and include model name and number. If FSA cannot determine which specification the build sheet is for, the item bid can be rejected as nonresponsive.
- Option pricing, See Section 2.13
- Pricing Sheet for Emergency Vehicle Lights and Sirens, if applicable
- Emergency Vehicle Technician Certifications, if applicable
- Service Standard Plan, Section 2.02, if applicable
- Any requested equivalents, Section 2.09, or exceptions, Section 2.07

FSA may ask awarded bidders to supply one hard copy set with original, written signatures and original compliance forms, prior to the contract execution. Hard copy bids should not be submitted unless specifically requested by FSA.

2.16 ZONE BIDDING

Bidders are allowed to bid in one or more geographic zones. The zone map is included in Appendix B. A space is provided for the bidder to indicate pricing for each zone. The bidder only submits a bid for each zone if pricing is provided for each zone.

2.17 EXECUTION OF BID

By submitting a response to this Invitation to Bid, the bidder agrees to the terms and conditions of this contract and to be bound by such terms and conditions if selected for award. The bidder must submit the Contract Signature Page with the signature of an authorized representative no later than the date of the final award.
2.18 MODIFICATION OR WITHDRAWALS OF BIDS

A bidder may submit a modified bid to replace all or any portion of a previously submitted bid until the due date and time listed in the Bid Calendar. Modifications received after the bid due date and time will not be considered.

Bids can be withdrawn in writing prior to the contract award. If a bidder believes that the bidder must withdraw the bid, the bidder must contact FSA immediately. Bid withdrawals are handled on a case by case basis, and can result in a limitation of participation in future bids.

2.19 LATE BIDS

The responsibility for submitting a bid before the stated due date and time on the bid calendar is solely and strictly the responsibility of the bidder. The FSA is not responsible for delays caused by technical problems, any internet outages or delays incurred by electronic delivery, or any other occurrence. Any reference to time will be based on Eastern Time.

2.20 BID OPENING

Bids shall be opened on the date and time specified on the Bid Calendar. The bid opening will occur at the Florida Sheriffs Association, 2617 Mahan Drive, Tallahassee, Florida.

FSA shall read the bidder name and if they have provided all the required information.

2.21 DETERMINATION OF RESPONSIVENESS

Determination of responsiveness will take place at the time of bid opening and evaluation. In order to be deemed a responsive bidder, the bid must conform in all material respects to the requirements stated in the Contract. As set forth in section 2.26, FSA reserves the right to waive or allow a vendor to correct minor irregularities.

2.22 RESPONSIBLE BIDDER CRITERIA

Bids will be evaluated to determine if eligibility and contract requirements are met. Responses that do not meet all requirements of this Invitation to Bid or fail to provide all required information, documents or materials may be rejected as nonresponsive.

Bidders whose responses, past performance, or current status do not reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of the Contract may be rejected as non-responsible. In determining a responsible bidder, the following factors may be considered:

- Adequacy of facilities, staffing, and financial resources;
- Previous experience with FSA contract or other similar government contracts;
- Ability to provide excellent customer service, including previous FSA contracts;
• Any other information relevant to the responsibility of a vendor that FSA is aware of.

In addition to the requirements of Section 2.01, FSA reserves the right to request staffing, performance and financial information from any bidder during the evaluation process if FSA determines this information is necessary to award the bid.

FSA reserves the right to determine which responses meet the requirements, specifications, terms and conditions of the solicitation, and which bidders are responsive and responsible.

FSA further reserves the right to limit participation of bidders who, in FSA’s sole discretion, are determined to present responsibility concerns that call into question the bidder’s ability to perform but that do not rise to the level of requiring rejection of the bidder as nonresponsible.

2.23 BASIS FOR AWARD

The FSA shall make awards to the lowest bidder by specification, by manufacturer and by zone to bidders deemed to be responsive and responsible. Awards may also be made to the second lowest bidder by specification, by manufacturer and by zone, if applicable and determined to be in the best interest of the FSA and the purchaser.

The Fleet Advisory Committee serves as the initial review for bid submissions. The Fleet Advisory Committee’s review is submitted to the FSA for final evaluation and determination of award.

The options in the bid shall be for informational purposes only and will not serve as a basis for bid protest. However, the FSA has the discretion to consider option pricing in making the award if doing so would be in the best interests of the FSA or the purchaser.

FSA reserves the right to accept or reject any and all bids, and to waive any minor irregularity, technicality or omission if it determines that doing so will serve the purchaser’s best interest.

2.24 FIRM BID

Bidder warrants by virtue of bidding it is submitting a firm bid and the prices quoted in their bid response will be good for an evaluation period of sixty (60) calendar days from the date of bid opening, and if awarded through the duration of the contract unless otherwise addressed by a contract extension or price adjustment as provided in this contract.

By virtue of the bid submission, bidder acknowledges its obligation to sell vehicles and equipment in all zones for which it is awarded. Failure of the bidder to comply with these requirements may result in the imposition of liquidated damages of up to $1,000 per vehicle or equipment, which amount the vendor agrees is reasonable, or probation, suspension, termination or a combination thereof from current and future bids at the FSA’s discretion.

2.25 BID TABULATIONS

The Bid Tabulation report will be posted on the FSA Cooperative Purchasing Program website after the bid submission closes as indicated in the Bid Calendar. https://www.flsheriffs.org/law-enforcement-programs/cooperative-purchasing-program/dealers-only.
If there is a delay in posting the bid tabulation results, FSA will post a notice of the delay and a revised date for posting of results.

2.26 MINOR IRREGULARITIES/RIGHT TO REJECT

The FSA has the right to accept or reject any and all bids, or separate portions thereof, and to waive any minor irregularity, technicality or omission if the FSA determines that doing so will serve its best interest or the best interest of the purchasers. A minor irregularity is a variation from the terms and conditions of this procurement that does not affect the price of the bid or give the bidder a substantial advantage over other bidders and thereby restrict or stifle competition and does not adversely impact the interests of the FSA or the purchasers. At its option, the FSA may allow a bidder to correct minor irregularities but is under no obligation to do so. In doing so, the FSA may request a bidder to provide clarifying information or additional materials to correct the irregularity. However, the FSA will not request and a bidder may not provide the FSA with additional materials that affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders.

The FSA may also reject any bids not submitted in the manner specified in this document.

2.27 CONE OF SILENCE

This Invitation to Bid is subject to the Cone of Silence that begins the date the bid submission opens as indicated in the Bid Calendar. During this period all communications regarding this solicitation between FSA and Bidder will cease, except for procedural questions, questions regarding problems incurred in the use of the bid system, or communications initiated by the FSA. All permitted communications during this period shall be made in writing to the procurement contacts identified in Section 1.01 of this Invitation to Bid.

FSA is not responsible for bidder’s improper use of the bid system. Exceptions will be granted to this section should any bid system malfunctions occur.
3.0 CONTRACT CONDITIONS

3.01 GENERAL REQUIREMENTS

Once the bid has been awarded, the terms and conditions of this document become the Contract between the FSA and the awarded vendor.

The terms and conditions apply to all vehicles and equipment purchased from this contract.

3.02 STATEMENT OF AUTHORITY

Each person signing the Contract warrants that he/she is duly authorized to do so and binds the respective party to the Contract.

3.03 VENDOR CONTACT INFORMATION

The vendor will maintain current contact information with FSA at all times.

If a change occurs during the contract, the vendor must notify FSA immediately. The Vendor Change Document must be completed, signed by an authorized representative and submitted via e-mail to CPP@flsheriffs.org.

A sample Vendor Change Document can be found in Appendix A and on the FSA website.

3.04 OPTION TO RENEW & PRICE ADJUSTMENT

Renewal Option

The contract may be renewed by mutual agreement, initiated at the discretion of the FSA, for up to two (2) additional years, on a year to year basis. The FSA reserves the right to in its sole discretion elect to renew the contract in whole or in part.

In the event that the contract is held beyond the term provided herein, it shall be on a month-to-month basis only and shall not constitute an implied renewal of the contract. Such a month-to-month extension shall be upon the same terms of the contract and at the compensation and payment provided herein.

Price Adjustment

Prior to completion of each contract term, the FSA may consider a price adjustment due to changes in the Producer Price Index (PPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics, as a result of any changes to national or state standards that require substantial cost adjustments, or in the event of material changes in tariffs that result in cost increases of 15% or more.

Prices may be increased or decreased by the percentage change reflected in the nationally published PPI. FSA shall determine the PPI based on the most recent published PPI initiated at the time of renewal that best reflects adjustments to the economy over the previous 12 months.

In the event of changes to national or state standards, the vendor must present verifiable changes in cost to FSA. The FSA will consider the cost changes and will make a final determination on the change in price.
For any vendor-initiated adjustment to commence on the first day of the renewed contract term, the vendor’s request or adjustment should be submitted one hundred and twenty (120) days prior to expiration of the then current contract. The vendor adjustment request must clearly substantiate the requested increase. If no request is received from the vendor, the FSA will assume that the vendor has agreed that the optional term may be exercised without pricing adjustment. Any adjustment request received after the commencement of a new option period will not be considered.

The FSA reserves the right to accept the renewal adjustment or to allow the contract to fully or partially terminate and readvertise for bids, whichever is in the best interest of the FSA.

3.05 ADDITIONS AND DELETIONS

The FSA reserves the right to add or delete any items from this bid or resulting contract when deemed to be in the best interest of FSA and the participating purchasers.

FSA reserves the right to remove, discontinue or suspend the sale or offering of any product within the Invitation to Bid document or existing contract, at its discretion.

This decision to take action may be based upon and not limited to:

- Few or no sales;
- Product recalls and other safety issues;
- Vendor/Manufacturer performance; or
- Lack of relevance of products.

3.06 EQUITABLE ADJUSTMENT

The FSA may make an equitable adjustment to the contract terms or pricing at its discretion.

3.07 DISCOUNTS

Discounts shall be below Manufacturer’s Standard Retail Pricing (MSRP) or manufacturers published list price for any vehicle, equipment and options.

The vendor has the authority to offer additional discounts based on quantity, as well as additional manufacturer or vendor discounts.

Discount ranges are not permissible. Discounts must be a whole, positive percentage with no decimal place (e.g. 10%).

3.08 CONDITIONS

It is understood and agreed that any item offered or shipped as a result of this bid shall be the most current model offered, i.e. the most current production model at the time of this bid.
3.09 PRODUCTION CUTOFF

Vendor shall notify the FSA in writing no less than sixty (60) calendar days prior to the close of final order date by the manufacturer when the final order date is during the term of the contract. Notification shall be provided in writing.

Purchase orders received by the vendor ten (10) business days prior to the final order date must be accepted and entered into the order system with the manufacturer.

If a purchase order has been timely received by the vendor or the manufacturer, and the manufacturer fails to produce or deliver the production year vehicle, the vendor must provide the next year’s equivalent model at current contract prices.

Purchase orders issued and received after the production cutoff date will be subject to availability. In this case, the vendor and manufacturer have the discretion whether to choose to provide next year’s model at current year’s prices until the end of the contract term.

If the manufacturer cutoff date is during the term of the contract and will affect the purchaser’s ability to obtain the specifications, FSA may consider substitutions from the same manufacturer.

3.10 FACILITIES

The FSA reserves the right to inspect the vendor’s facilities at any time with prior notice.

3.11 SUBSTITUTIONS

The FSA or purchasers will NOT accept substitutes of any kind. Vendors are expected to furnish the brand quoted in the bid once awarded. Any substitutes will be returned at the vendor’s expense. Delivery of substitutes and the delay in supplying the correct specification can be deemed grounds for termination for default.

3.12 POLICE RATED VEHICLES & MOTORCYCLES

Vehicles in this category have been reviewed by one or more of the nationally recognized authorities on Police Vehicle Testing Program/Evaluation.

These evaluations are not designed to recommend a particular product, but to serve as a resource for vehicles which are currently being offered for law enforcement service. To see the full detailed report click or copy the links below.

The importance with which each individual phase is weighted in these evaluations is a subjective decision which should be made by each agency based upon that agency’s needs.

For the purposes of this bid, the following are recognized authorities:

State of Michigan, Department of State Police and Department of Technology, Management and Budget Police Vehicle Evaluation Program
Los Angeles County Sheriff’s Department Law Enforcement Vehicle Test and Evaluation Program


### 3.13 SPECIAL SERVICE VEHICLES

Vehicles in this category in some cases have been reviewed by one or more of the nationally recognized authorities on Police Vehicle Testing Program/Evaluation. These vehicles are labeled as Special Service Vehicle (SSV) and often used in public safety applications and other areas of government. Refer to manufactures published information for detailed information regarding these vehicles.

### 3.14 CAB AND CHASSIS PURCHASES

Cab and Chassis can be purchased from the vendor without any required additional fitting by the vendor. If an incomplete chassis is sold to an agency, then the vendor is not responsible for the tag and title. Vendors are responsible for tag and title work if the chassis is completed by the vendor or the vendor’s contracted third party supplier.

FSA highly recommends that all upfitting of cab and chassis be performed by vendors who are licensed and certified to perform such work to avoid unnecessary exposure to future liability.

The requirements of Florida Statute 319.21 related to the manufacturer statement of origin apply to cab and chassis purchases.

### 3.15 FACTORY INSTALLED

All options specified as factory installed are to be installed on the vehicle at the primary site of assembly and is to be the manufacturer’s standard assembly-line product. No aftermarket and no vendor-installed equipment will be accepted as factory installed. Vendors found supplying aftermarket or vendor-installed equipment where factory installed are specified may be required to retrieve all delivered vehicles and reorder new vehicles meeting the specifications.

All factory ordered options are to be original equipment manufacturer (OEM) and factory installed unless otherwise noted by the vendor and acknowledged in writing by the purchaser. Verbal agreements will not be recognized.

Aftermarket parts, modifications, and factory produced parts and components ordered and installed by a vendor that do not meet the requirements of factory installed components, will be rejected for noncompliance with the requirements of the specification.

In the event that a component that does not meet the specifications is found installed on a vehicle before or after the vehicle has been accepted by the Purchaser, the vendor shall be required to replace the vehicle with a vehicle that meets the required specifications, including factory installed components. In the alternative, the purchaser shall decide whether they will accept vendor installed components.
3.16 VENDOR INSTALLED

All vendor-installed accessories shall be installed according to the manufacturer’s specifications. Examples include, but are not limited to a roll bar, trailer hitch, etc.

All such accessories must be manufactured by an established manufacturer of the product provided. Vendor is required to disclose Make and Model of product being offered and the location, design, and model must be approved by the purchaser prior to installation. Prior to any purchase, the vendor must also disclose the warranty of any item that is less than or exceeds the factory vehicle or equipment warranty coverage.

A vendor that employs a third-party supplier or subcontracts technicians to install emergency equipment on vehicles purchased on this contract is required to utilize technicians that are certified in Law Enforcement Vehicle Installation through EVT Certification Commission, Inc. or an approved equivalent.

The FSA may at any time during the contract period request proof of the required certification.

Any vendor that violates this provision will be considered in default of the contract. FSA may terminate the contract in accordance with Section 1.45 of this Invitation to Bid.

3.17 NON-SCHEDULED OPTIONS

FSA attempts to include scheduled, factory and aftermarket options in the bid document. If a purchaser requests a non-scheduled option that is not included in the bid document, the vendor may provide this non-scheduled option. The purchaser has the opportunity to request the vendor’s discount pricing for any non-scheduled options during the quote process. At no time should the non-scheduled option exceed MSRP or Published List Price.

Non-scheduled options should be listed as a separate line item and noted on the purchase order to include the price. All non-scheduled options are covered under these terms and conditions.

3.18 FORCE MAJEURE

A vendor shall not be penalized for a delay resulting from the vendor’s failure to comply with delivery requirements if neither the fault nor the negligence of the vendor or its employees contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the vendor’s control, or for any of the foregoing that third party suppliers if no alternate source of supply is available to the vendor.

3.19 DELIVERY TIME

Vendors shall specify the estimated delivery time in calendar days for each item. The purchaser should consult the vendor regarding vehicle production schedules. Delivery shall be within the normal working hours of the user, Monday through Friday, excluding holidays.
3.20 ORDER

The vendor shall submit a copy of the purchase order to the FSA within 15 days of receipt from the purchaser.

To initiate a purchase, a purchaser issues a purchase order to the vendor, which shall include:

- The contract number and title,
- Specification number,
- Purchaser’s federal identification number, and
- Name, phone number and email address for the point of contact at the purchasing agency.

Delivery or due dates should be discussed with the vendor at the time the quote is provided to the purchaser, or if no quote is provided, when the purchase order is delivered to the vendor. It is important to note that vendors do not have any control over production delays in schedules from the manufacturer.

While it is recommended that an agency purchase from the zone which is closest to their location, it is not mandatory to do so. If the purchaser determines that a vendor in another zone can better serve the purchaser’s needs, the purchaser may order from a vendor in another zone. Vendors that provide vehicles or equipment outside of an awarded zone may upon mutual agreement between the vendor and the purchaser charge a delivery fee.

The purchaser should forward an executed copy of the purchase order to the FSA at the same time the purchase order is sent to the vendor. Emails or hard copies are acceptable. Emails can be sent to coop@flsheriffs.org.

If a vendor receives a purchase order for a specification for which they were not awarded, the vendor must notify the purchaser and return the purchase order to the purchaser within three (3) business days.

All vehicles ordered prior to production cut off and in accordance with the contract shall be supplied in the manufacturer’s next model run of that class vehicle even if it requires supplying a later model at the original bid prices.

Vendor shall place the order with the manufacturer within 10 business days of receipt of the purchase order. The vendor shall assure that all orders are placed in full compliance with the specifications and the terms and conditions of the Contract and the purchase order.

It is the vendor’s responsibility to ensure that the vehicle or equipment ordered by the purchaser is fully compatible with all ordered options and that the vehicle complies with all applicable manufacturer and industry standards. The vendor’s acceptance of a purchaser’s order will indicate that the vendor agrees to deliver a vehicle that will be fully compatible with all of its options.

Any changes that are required to bring a vehicle or equipment into compliance with the various options due to an incorrect order will be accomplished at the vendor’s expense.

A Confirmation of Order form shall be completed by the vendor and returned to the purchaser 14 calendar days from receipt of purchase order without notification by the purchaser. The Confirmation of Order form is included in Appendix C.
3.21 VEHICLE AND EQUIPMENT DELIVERY

At a minimum, pre-delivery service shall include the following:

- Standard Vendor and Manufacturer protocol for new vehicle and equipment delivery;
- Cleaning of vehicle and equipment, if necessary, and removal of all unnecessary tags, stickers, or papers (window price sticker or supplied line sheet shall remain);
- Speedometer must be correct regardless of the tires provided by the vehicle manufacturer or axle ratio furnished;
- Verification that the hour meter does not exceed five (5) hours for equipment;
- Owner’s manual and warranty manual to accompany each vehicle and equipment; and
- MSRP list sheet (window sticker) MUST be in the vehicle when it is delivered to the purchaser. Vehicles that are missing this form, or have forms that have been altered will not be accepted. Build sheets, or documentation that verifies what components are included on the equipment being delivered, must be provided for equipment.

The vendor shall be responsible for delivering vehicles and equipment that are properly serviced, clean and in first class operating condition.

Vendor shall complete delivery of the vehicle and equipment to the purchaser within fourteen (14) calendar days of receipt of the vehicle from the manufacturer or equipment supplier. This deadline shall not apply to vehicles originating as an incomplete chassis.

Receipt of a vehicle or equipment by the vendor is defined as acceptance of the vehicle or equipment from a common carrier at the vendor’s place of business or any third party’s place of business.

Deliveries of less than 350 miles may be accomplished by driving the vehicle. Any delivery accomplished by driving the vehicle must be supervised and the driver must comply with manufacturer’s break-in requirements and all applicable traffic laws. Any delivery accomplished by driving a police rated vehicle must use an “OUT OF SERVICE” cover on light bars.

All deliveries in excess of 350 miles shall be made by transport, or otherwise approved by the purchasing agency. However, this requirement shall not apply to incomplete chassis. The purchaser has the option to reject a vehicle with more than 350 odometer miles, or may deduct $0.51 cents per mile in excess of 350 miles from the invoice, unless distance above 350 miles was previously approved by the purchaser. This requirement also applies to redelivery of vehicles that were rejected upon initial delivery. Equipment with more than five (5) hours on the hour meter may be rejected by the purchaser or the purchaser may choose to negotiate a lower purchase price when the unit exceeds five hours.
All warranties shall begin at the time of delivery to the purchaser. The purchaser’s warranty should not be active for incomplete vehicles or equipment and vehicles or equipment delivered to a third-party supplier before final delivery.

Vendor shall notify the purchaser no less than twenty-four (24) hours prior to delivery of the time and location, which shall reflect the mutually agreed upon delivery details. Transport deliveries must be unloaded and inspected by purchaser. Deliveries not complying with these requirements may be rejected and will have to be redelivered at vendor’s expense.

All vehicles or equipment with fuel tanks of thirty-five (35) gallons or less must contain no less than one quarter (1/4) tank of fuel as indicated by the fuel gauge at the time of delivery. For vehicles and equipment that have more than thirty-five (35) gallons, a minimum of one eighth (1/8) of a tank of fuel must be provided.

### 3.22 INSPECTION AND ACCEPTANCE

It is the responsibility of the purchaser to inspect a vehicle or equipment for any damages.

Each purchaser shall make a good faith effort to inspect the vehicles or equipment before or at the time of delivery for acceptance. One (1) day is the suggested period for inspection. However, if reasonable accommodations for inspection cannot be made upon delivery, the purchaser may have up to three (3) days to inspect the vehicle or equipment for acceptance.

Inspection and acceptance will be at the purchaser’s destination unless otherwise previously agreed upon location was provided in the purchase order.

It is the purchaser’s responsibility to thoroughly inspect each vehicle and equipment prior to acceptance. Copies of the bid specifications and purchase order will be delivered with the vehicle. Purchasers are to inspect the vehicle and equipment and compare bid specifications, purchase order and manufacturer’s window sticker or manufacturer’s invoice to ensure vehicle or equipment meets or exceeds the requirements of the bid specifications and the submitted purchase order. Purchasers should inspect the vehicle and equipment for physical damage.

Delivery of a vehicle or equipment to a purchaser does not constitute acceptance for the purpose of payment. Final acceptance and authorization of payment shall be given only after a thorough inspection indicates that the vehicle and equipment meet contract specifications and the requirements listed below.

Should the delivered vehicle differ in any respect from specifications, payment can be withheld until such time as the vendor completes the necessary corrective action.

Units shall be delivered with each of the following documents completed or included:

1. Copy of Customer’s Purchase Order
2. Copy of the applicable Vehicle or equipment specification
3. Copy of Manufacturer’s Invoice or Window Sticker for vehicles (prices may be deleted from the manufacturer’s invoice); or a Build sheet, or documentation that verifies what components are included on the equipment being delivered, for equipment
4. Copy of Pre-Delivery Service Report
5. Warranty Certification
6. Owner’s manual

7. If the vendor does not provide the tag and title, then the DHSMV 82040 (Application for Certificate of Title and/or Vehicle Registration) which requires a signature of authorized representative. Deliveries that do not include the above items will be considered incomplete and can be refused.

3.23 REGISTRATION, TAG AND TITLE

Costs of registration, tag and title shall not exceed the statutory rates. FSA administrative fee does not apply to tag and title work.

Title items shall be the responsibility of the vendor. If the purchaser is a government agency, the purchaser has the right to choose to register and title the vehicle or equipment.

Reasonable administrative costs for registration and title services, including obtaining temporary tags, tag transfers, and new tags are permitted. All costs associated with obtaining, filing and shipping of tags shall be listed as an option during the bid submission for each item bid. Administrative costs can include convenience fees, cost reimbursements for filing, obtaining or delivery of tags, or any costs over the original purchase price of the registration and title. Administrative costs for registration and titling can be negotiated between the purchaser and the vendor.

3.24 INVOICING AND PAYMENTS

Invoicing and payments shall be the responsibility of the vendor and purchaser placing orders using this contract. Vendors must invoice each purchaser independently.

A purchaser has three (3) working days to inspect and accept the vehicles or equipment. The vendor shall be paid upon submission of invoices to the Purchaser after satisfactory delivery and acceptance of the vehicles and/or equipment.

The Local Government Prompt Payment Act will apply to ensure timely payment of Vendor invoices. The Local Government Prompt Payment Act is defined in Sections 218.70–218.79 of Florida Statutes.

3.25 WARRANTY REPAIRS AND SERVICE

All warranties shall begin at time of delivery and final acceptance by the purchaser. Failure by any manufacturer’s authorized representative to render proper warranty service or adjustments, including providing a copy of the warranty work order to the purchaser, may subject the vendor to suspension from the approved vendor listing until satisfactory evidence of correction is presented to the FSA.

3.26 INADEQUATE SERVICE

When vehicles and equipment require service or adjustments upon delivery, the vendor shall either remedy the defect, or be responsible for reimbursing the manufacturer’s local authorized representative or other service provider to remedy the defect. Such service or adjustments shall be initiated by the vendor within 48 hours after notification by a purchaser, not to include weekends and holidays. Delivery will not be considered complete until all services or adjustments are satisfactory and the vehicle or equipment is redelivered.
The provisions of the delivery section shall remain in effect until the redelivery is accomplished. The cost of any transportation required shall be the responsibility of the vendor until the vehicles or equipment are satisfactory and accepted by the purchaser.

3.27 REPORTING: PURCHASE ORDERS & QUARTERLY REPORTS

Purchase Orders
The Vendor must submit copies of purchase orders upon receipt to the FSA. Purchase orders are considered late if not submitted fifteen (15) days after the date of the purchase order.

Vendors should scan a complete copy of the purchase order and attach it as a .pdf. Place the document title in the subject line of the e-mail and send purchase order copies to COOP@flsheriffs.org.

The files should be named using the following examples:

Examples:
- County = Florida County, County of PO 12345
- City = Florida City, City of PO 12345
- Sheriff = Sheriff Office of PO 12345
- Education = Institution Name PO 12345

Quarterly Reports
Quarterly reports are the contractual responsibility of each vendor. Quarterly reports which do not adhere to the required format (as set forth in Appendix D) or are not complete of all purchase orders will be returned to the reporting vendor for correction of deficiencies.

All quarterly reports are to be sent to REPORTS@flsheriffs.org.

Quarterly reports must be complete with the name of the vendor. For example, “Best Vendor” in the document header. Do not indicate the quarter on the top of the report. Do not include purchase orders with quarterly reports. The template of a quarterly report is located in Appendix D.

Quarterly reports are due no later than the 15th day of the month following the end of the quarter.

Quarterly reports should follow this schedule:

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Date Range</th>
<th>Report Due</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarter 1</td>
<td>October 1 – December 31</td>
<td>Q1 Report Due:</td>
<td>January 15</td>
</tr>
<tr>
<td>Quarter 2</td>
<td>January 1 – March 31</td>
<td>Q2 Report Due:</td>
<td>April 15</td>
</tr>
<tr>
<td>Quarter 3</td>
<td>April 1 – June 30</td>
<td>Q3 Report Due:</td>
<td>July 15</td>
</tr>
<tr>
<td>Quarter 4</td>
<td>July 1 – September 30</td>
<td>Q4 Report Due:</td>
<td>October 15</td>
</tr>
</tbody>
</table>

If a vendor has no sales within a quarter, the vendor is required to submit a quarterly report, mark the box on the green line and indicate “NO SALES THIS QUARTER” on the report.

FSA reserves the right to modify the procedure for submitting quarterly reports during the term of the contract. Such a change shall not materially modify the substance of the information to be reported, but may change the method by which future quarterly reports are to be submitted. In the event of such a
change, FSA will provide written notice to all vendors of the method by which future quarterly reports are to be submitted.

3.28 ADMINISTRATIVE FEE

The FSA charges three quarters of one percent (.0075) to procure, process and administer the Contract.

After receipt of payment from contract purchases, the vendor shall remit all administrative fees to the FSA no later than 15 days after the end of each quarter. All fees payable to the FSA during any given quarter will be accompanied and supported by a Quarterly Report.

Bidders are to include the administrative fee of three quarters of one percent (.0075) in all bid prices. The fee should be incorporated into the price at the time of bid submission. This fee should also be included on all add options. The administrative fee will remain payable to FSA and no relief from payment of the administrative fee, nor any additional charge to recoup the administrative fee, will be permitted if a vendor fails to incorporate the administrative fee in its bid pricing.

The fee should never be listed as a separate line item on any purchase order.

The administrative fee is based on the total purchase order amount of new vehicles or equipment. This fee excludes any value given to purchasers for trade-ins. Trade-ins, extended warranties and other exchanges will not reduce or impact the fee calculation.

The administrative fees are the contractual responsibility of each awarded vendor.

By submission of the quarterly reports and administrative fee, the vendor is certifying the accuracy of the reports and deposits. All reports and fee submissions shall be subject to audit by the FSA or their designee.

All participating vendors will be responsible for making sure that FSA has the contact information, including e-mail address, for the person responsible for quarterly reports. There will be no reminders for the quarterly reports or the administrative fee.

Checks for the administrative fee can be sent to:

Florida Sheriffs Association  
Cooperative Purchasing Program  
2617 Mahan Drive  
Tallahassee, FL 32308

3.29 LIQUIDATED DAMAGES

The vendor warrants that the product supplied to the FSA or purchaser shall conform in all respects to the standards set forth and the failure to comply with this condition will be considered as a breach of contract. Any liquidated damages levied because of inadequacies or failures to comply with these requirements shall be borne solely by the vendor responsible for same.

Failure to submit the administrative fee with accompanying quarterly reports within 15 calendar days following the end of each quarter will result in the imposition of liquidated damages. Vendors failing to submit administrative fees and quarterly reports will incur liquidated damages in the amount of $25 for
each calendar day that fees and reports are past due, beginning on the 16th day following the end of the quarter.

If a civil action is initiated by the FSA to recover administrative fees or liquidated damages as set forth in this section and Section 3.28, the prevailing party shall be entitled to its reasonable attorneys’ fees and costs incurred in the litigation. Venue shall lie in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida.

When quarterly reports are late, liquidated damages are to be included in vendor’s Quarterly Report and administrative fee submission. Liquidated damages that remain unpaid beyond 45 days can result in FSA, at its sole discretion, implementing contract compliance actions, including but not limited to, suspension, limited participation by specifications or zones, disqualification from future solicitations, or termination for cause pursuant to Section 1.45.

**Schedule of Liquidated Damages**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to submit quarterly report on time</td>
<td>$25 per calendar day</td>
</tr>
<tr>
<td>Failure to report a Purchase Order to FSA within the 15</td>
<td>$100 per Purchase Order</td>
</tr>
<tr>
<td>calendar days of the purchase order date</td>
<td></td>
</tr>
<tr>
<td>Failure to Report Sales</td>
<td>.0075 of the sales price plus 1.5% each month following the delivery date.</td>
</tr>
</tbody>
</table>

Vendor agrees and acknowledges that its failure to take any of the actions specified in the above schedule will damage the FSA, but by their nature such damages are difficult to ascertain. Accordingly, the above specified schedule of liquidated damages shall apply to this contract. Vendor agrees and acknowledges that these liquidated damages are not intended to be and do not constitute a penalty, but are instead intended solely to compensate the FSA for damages, and that these amounts are reasonably calculated to compensate the FSA for the damages that it will incur as a result of the vendor’s failure to take the specified actions.
Please complete this form to validate a requested change to Company Addresses, Contacts or Contact information below. Include all sections where information has changed, old and new.

**FSA Contract Number(s) affected by change:**

<table>
<thead>
<tr>
<th>Old Information</th>
<th>New Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Old Company Name:</td>
<td>New Company Name:</td>
</tr>
<tr>
<td>Old Company Address:</td>
<td>New Company Address:</td>
</tr>
<tr>
<td>Old Company City:</td>
<td>New Company City:</td>
</tr>
<tr>
<td>Old Company State:</td>
<td>New Company State:</td>
</tr>
<tr>
<td>Old Company Zip:</td>
<td>New Company Zip:</td>
</tr>
</tbody>
</table>

**Company Contact Changes:**

<table>
<thead>
<tr>
<th>Old Contact Information</th>
<th>New Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Old Contact Name (First, Last):</td>
<td>New Contact Name (First, Last):</td>
</tr>
<tr>
<td>Old Contact E-Mail:</td>
<td>New Contact E-Mail:</td>
</tr>
<tr>
<td>Old Contact Office Phone:</td>
<td>New Contact Office Phone:</td>
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<tr>
<td>Old Contact Mobile Phone:</td>
<td>New Contact Mobile Phone:</td>
</tr>
<tr>
<td>Old Contact Fax Phone:</td>
<td>New Contact Fax Phone:</td>
</tr>
</tbody>
</table>

This information is requested by an authorized representative of ________________. This request will take effect as soon as it is received by FSA by e-mailing to cpp@flsheriffs.org.

Name of Authorized Company Representative: ________________

Job Title: ________________ Date of Request: ________________

Authorized Company Representative Signature: ________________

**FSA Office Use:**

<table>
<thead>
<tr>
<th>Date Received:</th>
<th>Change Effective:</th>
<th>FSA Agent:</th>
</tr>
</thead>
</table>
CONFIRMATION OF ORDER FORM

Police Rated, Administrative, Utility Vehicles Trucks and Vans

Bid # FSAXX-XXXX

Vendors are to complete and return this confirmation of order form by email, fax or mail to the agency location listed below within fourteen (14) calendar days after receipt of purchase order.

Vendor:

Vendor:

Address: ___________________________ ___________________________

City: ___________________________ State: ___________ Zip: ___________

Contact Person: ___________________________ Fax:

Phone Number: ___________________________ Fax:

Specification No. ___________ Type Vehicle/Equipment:

Purchase Order Number: ___________ Purchase Order Received: ___________

Order Was Placed With the Manufacturer on:

Under Production Number:

Estimated Date of Delivery: ___________

Comments: ___________________________

PURCHASER:

Contact Person: ___________________________

Address: City: ___________________________

Phone Number: ___________________________ State: ___________ Zip: ___________

E-mail: ___________________________ Fax:

FSA Cooperative Purchasing Program 2019-2020

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## Appendix D

### Quarterly Workbook for Bid #FSA/XX-XXXXXX
Contract Term: Oct. 1, 20XX thru September 30, 20XX

**CONTRACT NAME**

<table>
<thead>
<tr>
<th>October 1 - December 31 \ 1st Quarter</th>
<th>Zero Activity/Payment</th>
<th># Check Box</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchaser Name</td>
<td>PO #</td>
<td>PO Date</td>
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**Page Total**

|                       | $ | - | $ | - |

Fees and reports are due no later than the 15th of the month following quarter end.
Appendix E

Bid Calendar

FSA19-VEL27.0 Pursuit, Administrative and Other Vehicles
FSA19-VEH17.0 Heavy Trucks and Equipment
Contract Period: October 1, 2019 – September 30, 2020

<table>
<thead>
<tr>
<th>CALENDAR ITEM</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bid Announcement</td>
<td>5/13/19 &amp; 5/28/19</td>
</tr>
<tr>
<td>Voluntary Workshop – 10:30 AM EDT Contract FSA19-VEL27.0</td>
<td>6/20/19</td>
</tr>
<tr>
<td>Voluntary Workshop – 2:00 PM EDT Contract FSA19-VEH17.0</td>
<td>6/20/19</td>
</tr>
<tr>
<td>Mandatory Pre-Bid Meeting for Contract FSA19-VEL27.0</td>
<td>7/9/19</td>
</tr>
<tr>
<td>Mandatory Pre-Bid Meeting for Contract FSA19-VEH17.0</td>
<td>7/10/19</td>
</tr>
<tr>
<td>Request for Clarifications Due – 5:00 PM EDT</td>
<td>8/2/19</td>
</tr>
<tr>
<td>Mandatory Qualifying Documents Submission – 5:00 PM EDT</td>
<td>8/2/19</td>
</tr>
<tr>
<td>FSA Response to Request for Clarifications</td>
<td>8/9/19</td>
</tr>
<tr>
<td>Cone of Silence</td>
<td>8/9/19 – 10/1/19</td>
</tr>
<tr>
<td>Bid System Open</td>
<td>8/9/19</td>
</tr>
<tr>
<td>Bid Submissions Due</td>
<td>9/3/19</td>
</tr>
<tr>
<td>Public Bid Opening – 10:00 AM EDT</td>
<td>9/4/19</td>
</tr>
<tr>
<td>Fleet Advisory Committee Bid Review</td>
<td>9/9/19 – 9/12/19</td>
</tr>
<tr>
<td>Intent to Award Posted</td>
<td>9/13/19</td>
</tr>
<tr>
<td>Final Bid Award</td>
<td>10/1/19</td>
</tr>
</tbody>
</table>

Workshop Instructions: Voluntary workshops are via teleconference. To participate, call-in on the designated date and times in the calendar for the contract of interest.
Dial-in # 1-800-920-7487
Participant # 6849541#

Pre-Bid Meeting Location: Falkenberg Road Jail Assembly Room
520 North Falkenberg Road
Tampa, FL 33613

Pre-Bid Meeting Itinerary:
FSA19-VEL27.0 Pursuit, Administrative & Other Vehicles
July 9, 2019
9:00 AM – 4:00 PM EDT

FSA19-VEH17.0 Heavy Trucks and Equipment
July 10, 2019
9:00 AM – 4:00 PM EDT
### GOVERNMENT AGENCY INFORMATION

<table>
<thead>
<tr>
<th>Invoice to:</th>
<th>Ship to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lee County Port Authority</td>
<td>SAME</td>
</tr>
<tr>
<td>Address: 15920 Air Cargo Lane</td>
<td>Address:</td>
</tr>
<tr>
<td>City, State, Zip: Fort Myers FL, 33913</td>
<td>City, State, Zip:</td>
</tr>
<tr>
<td>Contact Name: John Batolozzi</td>
<td>Contact Name:</td>
</tr>
<tr>
<td>Phone: 239596.4801 <a href="mailto:jmbatolozzi@flycpa.com">jmbatolozzi@flycpa.com</a></td>
<td>Phone:</td>
</tr>
</tbody>
</table>

### VENDOR

<table>
<thead>
<tr>
<th>Alamo Industrial</th>
</tr>
</thead>
<tbody>
<tr>
<td>1502 E Walnut ST</td>
</tr>
<tr>
<td>Segun TX 78154</td>
</tr>
</tbody>
</table>

### DELIVERING DEALER

<table>
<thead>
<tr>
<th>Everglades Farm Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>9501 S.R. 82</td>
</tr>
<tr>
<td>Ft. Myers, FL 33906</td>
</tr>
</tbody>
</table>

| Contact: PJ Crews (Cell 239 588-0311) |

### Florida Sheriffs Contract

**Contract #: FSA19-VEH17.0**  
**Effective Date:** October 1, 2019 - September 30, 2020

### Order Codes

<table>
<thead>
<tr>
<th>Order Code</th>
<th>Description</th>
<th>Up-Downgrade/Option</th>
<th>list</th>
<th>Contract Price per Unit</th>
<th>Total Contract Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPEC# 27, 2997441, 4803040</td>
<td>2019 JOHN DEERE 6120M, JD6145IVC/4R1WRadial, 30' Maverick2 Telescoping Boom</td>
<td>Base Spec, UPGRADE, UPGRADE</td>
<td>1</td>
<td>$137,262.00</td>
<td>$137,262.00</td>
</tr>
<tr>
<td>Includes: Rotary Head Cutter w/Swivel, Air Suspension Seat, 22 Ply Nokian Tires, Rear washer/wiper + Beacon, Telescopic Mirrors, Radio</td>
<td>$137,262.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Trade-In:</strong></td>
<td></td>
<td></td>
<td></td>
<td>$28,451.00</td>
<td>$28,451.00</td>
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<tr>
<td><strong>Total Equipment Price:</strong></td>
<td></td>
<td></td>
<td></td>
<td>$27,785.00</td>
<td>$27,785.00</td>
</tr>
<tr>
<td><strong>Equipment Price:</strong></td>
<td></td>
<td></td>
<td></td>
<td>$193,478.00</td>
<td></td>
</tr>
<tr>
<td><strong>Quantity Purchased:</strong></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
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<tr>
<td><strong>Total Purchase Price:</strong></td>
<td></td>
<td></td>
<td></td>
<td>$193,478.00</td>
<td></td>
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<tr>
<td><strong>Non-Contract Equipment (if applicable):</strong></td>
<td></td>
<td></td>
<td></td>
<td>$7,000.00</td>
<td></td>
</tr>
<tr>
<td><strong>Less Trade-In (if applicable):</strong></td>
<td></td>
<td></td>
<td></td>
<td>(7,300.00)</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal:</strong></td>
<td></td>
<td></td>
<td></td>
<td>$186,478.00</td>
<td></td>
</tr>
</tbody>
</table>

**Municipal Lease?** | YES  
**Retail Note?** | No  
**Contract #:**

If tax exempt please submit tax exemption certificate with purchase order. 
Total Contract Price: $186,478.00

Please submit this form along with the purchase order.
1. REQUESTED MOTION/PURPOSE: Accept a revision to the state grant (Public Transportation Grant Agreement, Financial Project Nos. 441981-1-94-01 and 441981-1-94-02) with the Florida Department of Transportation for the Terminal Expansion at Southwest Florida International Airport.
2. FUNDING SOURCE: N/A
3. TERM: N/A
4. WHAT ACTION ACCOMPLISHES: Amends the state grant to add new required CEI language and address minor changes for the RSW Terminal Expansion project.

5. CATEGORY: 15. Consent Agenda
6. ASMC MEETING DATE: 12/17/2019
7. BoPC MEETING DATE: 1/16/2020

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

9. REQUESTOR OF INFORMATION:
   (ALL REQUESTS)
   NAME: Mark Fisher
   DIV: Development

10. BACKGROUND:
On November 7, 2019, the Joint Board approved the Public Transportation Grant Agreement (PTGA), Project Financial Nos. 441981-1-94-01 and 441981-1-94-02, providing $10,679,532 in state funds in FY2019/2020 to be used towards eligible costs for the RSW Terminal Expansion project. Subsequently, FDOT District One staff amended the PTGA form to include the following:

- State grant award amount listed in Exhibit G (typo)
- SIS Sequence 01 funds were deferred from 2023 to 2024
- New language regarding the recent construction engineering and inspection (CEI) requirement in Section 337.14(7), Florida Statues
- Notice of Completion Template removed (satisfied by FDOT Form No. 725-040-31)

As a result, FDOT District One staff has issued the attached revision to the previously approved PTGA and request the Board's approval.

Attachments:
- Resolution
- Public Transportation Grant Agreement

11. RECOMMENDED APPROVAL

12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:
- APPROVED
- APPROVED as AMENDED
- DENIED
- OTHER

13. PORT AUTHORITY ACTION:
- APPROVED
- APPROVED as AMENDED
- DENIED
- DEFERRED to
- OTHER
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
GRANT AGREEMENT

Financial Project Number(s): 441981-1-94-01, 441981-1-94-02
Fund(s): DIS, GMR
FLAIR Category: 088719
Work Activity Code/Function: 215
Object Code: 751000
Identification Number (FAIN) – Transit only: N/A
Org. Code: 55012020129
Federal Number/Federal Award: N/A
Vendor Number: VF850717520004
Federal Award Date: N/A
Agency DUNS Number: 781586419

Contract Number: G1C87
CFDA Number: N/A
CFDA Title: N/A
CSFA Number: 55,004
CSFA Title: Aviation Grant Program

THIS PUBLIC TRANSPORTATION GRANT AGREEMENT ("Agreement") is entered into by and between the State of Florida, Department of Transportation, ("Department"), and Lee County Port Authority, ("Agency"). The Department and the Agency are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the Parties agree to the following:

1. Authority. The Agency, by Resolution or other form of official authorization, a copy of which is attached as Exhibit "D", Agency Resolution and made a part of this Agreement, has authorized its officers to execute this Agreement on its behalf. The Department has the authority pursuant to Section(s) 332.007, Florida Statutes, to enter into this Agreement.

2. Purpose of Agreement. The purpose of this Agreement is to provide for the Department's participation in Southwest Florida International Airport Terminal Expansion, as further described in Exhibit "A", Project Description and Responsibilities, attached and incorporated into this Agreement ("Project"), to provide Department financial assistance to the Agency, state the terms and conditions upon which Department funds will be provided, and to set forth the manner in which the Project will be undertaken and completed.

3. Program Area. For identification purposes only, this Agreement is implemented as part of the Department program area selected below (select all programs that apply):

- Aviation
- Seaports
- Transit
- Intermodal
- Rail Crossing Closure
- Match to Direct Federal Funding (Aviation or Transit)
  (Note: Section 15 and Exhibit G do not apply to federally matched funding)
- Other

4. Exhibits. The following Exhibits are attached and incorporated into this Agreement:

- Exhibit A: Project Description and Responsibilities
- Exhibit B: Schedule of Financial Assistance
- Exhibit C: Terms and Conditions of Construction
- Exhibit D: Agency Resolution
- Exhibit E: Program Specific Terms and Conditions
- Exhibit F: Contract Payment Requirements
- Exhibit G: Financial Assistance (Single Audit Act)
5. Time. Unless specified otherwise, all references to "days" within this Agreement refer to calendar days.

6. Term of Agreement. This Agreement shall commence upon full execution by both Parties ("Effective Date") and continue through June 30, 2025. If the Agency does not complete the Project within this time period, this Agreement will expire unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of this Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed prior to the Effective Date or after the expiration date of this Agreement will not be reimbursed by the Department.

a. If this box is checked the following provision applies:

Unless terminated earlier, work on the Project shall commence no later than the ___ day of ___, or within ___ days of the issuance of the Notice to Proceed for the construction phase of the Project (if the Project involves construction), whichever date is earlier. The Department shall have the option to immediately terminate this Agreement should the Agency fail to meet the above-required dates.

7. Amendments, Extensions, and Assignment. This Agreement may be amended or extended upon mutual written agreement of the Parties. This Agreement shall not be renewed. This Agreement shall not be assigned, transferred, or otherwise encumbered by the Agency under any circumstances without the prior written consent of the Department.

8. Termination or Suspension of Project. The Department may, by written notice to the Agency, suspend any or all of the Department's obligations under this Agreement for the Agency's failure to comply with applicable law or the terms of this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected.

a. If the Department intends to terminate the Agreement, the Department shall notify the Agency of such termination in writing at least thirty (30) days prior to the termination of the Agreement, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

b. The Parties to this Agreement may terminate this Agreement when its continuation would not produce beneficial results commensurate with the further expenditure of funds. In this event, the Parties shall agree upon the termination conditions.

c. If the Agreement is terminated before performance is completed, the Agency shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed the equivalent percentage of the Department's maximum financial assistance. If any portion of the Project is located on the Department's right-of-way, then all work in progress on the Department right-of-way will become the property of the Department and will be turned over promptly by the Agency.

d. In the event the Agency fails to perform or honor the requirements and provisions of this Agreement, the Agency shall promptly refund in full to the Department within thirty (30) days of the termination of the Agreement any funds that were determined by the Department to have been expended in violation of the Agreement.

e. The Department reserves the right to unilaterally cancel this Agreement for failure by the Agency to comply with the Public Records provisions of Chapter 119, Florida Statutes.
9. Project Cost:

a. The estimated total cost of the Project is $21,359,064. This amount is based upon Exhibit "B", Schedule of Financial Assistance. The timeline for deliverables and distribution of estimated amounts between deliverables within a grant phase, as outlined in Exhibit "B", Schedule of Financial Assistance, may be modified by mutual written agreement of the Parties and does not require execution of an Amendment to the Public Transportation Grant Agreement. The timeline for deliverables and distribution of estimated amounts between grant phases requires an amendment executed by both Parties in the same form as this Agreement.

b. The Department agrees to participate in the Project cost up to the maximum amount of $10,679,532 and, the Department's participation in the Project shall not exceed 50.00% of the total eligible cost of the Project, and as more fully described in Exhibit "B", Schedule of Financial Assistance. The Agency agrees to bear all expenses in excess of the amount of the Department's participation and any cost overruns or deficits involved.

10. Compensation and Payment:

a. Eligible Cost. The Department shall reimburse the Agency for allowable costs incurred as described in Exhibit "A", Project Description and Responsibilities, and as set forth in Exhibit "B", Schedule of Financial Assistance.

b. Deliverables. The Agency shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Project and the quantifiable, measurable, and verifiable units of deliverables are described more fully in Exhibit "A", Project Description and Responsibilities. Modifications to the deliverables in Exhibit "A", Project Description and Responsibilities requires a formal written amendment.

c. Invoicing. Invoices shall be submitted no more often than monthly by the Agency in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable, and verifiable deliverables as established in Exhibit "A", Project Description and Responsibilities. Deliverables and costs incurred must be received and approved by the Department prior to reimbursement. Requests for reimbursement by the Agency shall include an invoice, progress report, and supporting documentation for the deliverables being billed that are acceptable to the Department. The Agency shall use the format for the invoice and progress report that is approved by the Department.

d. Supporting Documentation. Supporting documentation must establish that the deliverables were received and accepted in writing by the Agency and must also establish that the required minimum standards or level of service to be performed based on the criteria for evaluating successful completion as specified in Exhibit "A", Project Description and Responsibilities has been met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of charges as described in Exhibit "F", Contract Payment Requirements.

e. Travel Expenses. The selected provision below is controlling regarding travel expenses:

X Travel expenses are NOT eligible for reimbursement under this Agreement.

_ Travel expenses ARE eligible for reimbursement under this Agreement. Bills for travel expenses specifically authorized in this Agreement shall be submitted on the Department's Contractor Travel Form No. 300-000-06 and will be paid in accordance with Section 112.061,
Florida Statutes, and the most current version of the Department's Disbursement Handbook for Employees and Managers.

f. **Financial Consequences.** Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes, or the Department's Comptroller under Section 334.044(29), Florida Statutes. If the Department determines that the performance of the Agency is unsatisfactory, the Department shall notify the Agency of the deficiency to be corrected, which correction shall be made within a timeframe to be specified by the Department. The Agency shall, within sixty (60) days after notice from the Department, provide the Department with a corrective action plan describing how the Agency will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract non-compliance. If the corrective action plan is unacceptable to the Department, the Agency will not be reimbursed. If the deficiency is subsequently resolved, the Agency may bill the Department for the amount that was previously not reimbursed during the next billing period. If the Agency is unable to resolve the deficiency, the funds shall be forfeited at the end of the Agreement's term.

g. **Invoice Processing.** An Agency receiving financial assistance from the Department should be aware of the following time frames. Inspection or verification and approval of deliverables shall take no longer than 20 days from the Department's receipt of the invoice. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the deliverables are received, inspected or verified, and approved.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Agency. Interest penalties of less than one (1) dollar will not be enforced unless the Agency requests payment. Invoices that have to be returned to an Agency because of Agency preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Agency who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

h. **Records Retention.** The Agency shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five years after final payment is made. Copies of these records shall be furnished to the Department upon request. Records of costs incurred include the Agency's general accounting records and the Project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the Project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.

i. **Progress Reports.** Upon request, the Agency agrees to provide progress reports to the Department in the standard format used by the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of the Project and of details thereof.

j. **Submission of Other Documents.** The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the Project as the Department
may require as listed in Exhibit "E", Program Specific Terms and Conditions attached to and incorporated into this Agreement.

k. **Offsets for Claims.** If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement that it has with the Agency owing such amount if, upon written demand, payment of the amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

l. **Final Invoice.** The Agency must submit the final invoice on the Project to the Department within 120 days after the completion of the Project. Invoices submitted after the 120-day time period may not be paid.

m. **Department’s Performance and Payment Contingent Upon Annual Appropriation by the Legislature.** The Department’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Department’s funding for this Project is in multiple fiscal years, a notice of availability of funds from the Department’s project manager must be received prior to costs being incurred by the Agency. See Exhibit “B”, Schedule of Financial Assistance for funding levels by fiscal year. Project costs utilizing any fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.

n. **Limits on Contracts Exceeding $25,000 and Term more than 1 Year.** In the event this Agreement is in excess of $25,000 and has a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of $25,000 and which have a term for a period of more than 1 year."

o. **Agency Obligation to Refund Department.** Any Project funds made available by the Department pursuant to this Agreement that are determined by the Department to have been expended by the Agency in violation of this Agreement or any other applicable law or regulation shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the Agency files shall not constitute a waiver of the Department’s rights as the funding agency to verify all information at a later date by audit or investigation.

p. **Non-Eligible Costs.** In determining the amount of the payment, the Department will exclude all Project costs incurred by the Agency prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs that are not provided for in Exhibit “A”, Project Description and Responsibilities, and as set forth in Exhibit “B”, Schedule of Financial Assistance, costs agreed to be borne by the Agency or its contractors and subcontractors for
not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangement that has not been approved in writing by the Department. Specific unallowable costs may be listed in Exhibit “A”, Project Description and Responsibilities.

11. General Requirements. The Agency shall complete the Project with all practical dispatch in a sound, economical, and efficient manner, and in accordance with the provisions in this Agreement and all applicable laws.

a. Necessary Permits Certification. The Agency shall certify to the Department that the Agency’s design consultant and/or construction contractor has secured the necessary permits.

b. Right-of-Way Certification. If the Project involves construction, then the Agency shall provide to the Department certification and a copy of appropriate documentation substantiating that all required right-of-way necessary for the Project has been obtained. Certification is required prior to authorization for advertisement for or solicitation of bids for construction of the Project, even if no right-of-way is required.

c. Notification Requirements When Performing Construction on Department’s Right-of-Way. In the event the cost of the Project is greater than $250,000.00, and the Project involves construction on the Department’s right-of-way, the Agency shall provide the Department with written notification of either its intent to:

i. Require the construction work of the Project that is on the Department’s right-of-way to be performed by a Department prequalified contractor, or

ii. Construct the Project utilizing existing Agency employees, if the Agency can complete said Project within the time frame set forth in this Agreement.

d. If this box is checked, then the Agency is permitted to utilize its own forces and the following provision applies: Use of Agency Workforce. In the event the Agency proceeds with any phase of the Project utilizing its own forces, the Agency will only be reimbursed for direct costs (this excludes general overhead).

e. If this box is checked, then the Agency is permitted to utilize Indirect Costs: Reimbursement for Indirect Program Expenses (select one):

i. Agency has selected to seek reimbursement from the Department for actual indirect expenses (no rate).

ii. Agency has selected to apply a de minimis rate of 10% to modified total direct costs. Note: The de minimis rate is available only to entities that have never had a negotiated indirect cost rate. When selected, the de minimis rate must be used consistently for all federal awards until such time the agency chooses to negotiate a rate. A cost policy statement and de minimis certification form must be submitted to the Department for review and approval.

iii. Agency has selected to apply a state or federally approved indirect cost rate. A federally approved rate agreement or indirect cost allocation plan (ICAP) must be submitted annually.

f. Agency Compliance with Laws, Rules, and Regulations, Guidelines, and Standards. The Agency shall comply and require its contractors and subcontractors to comply with all terms and conditions of this Agreement and all federal, state, and local laws and regulations applicable to this Project.
g. Claims and Requests for Additional Work. The Agency shall have the sole responsibility for resolving claims and requests for additional work for the Project. The Agency will make best efforts to obtain the Department's input in its decisions. The Department is not obligated to reimburse for claims or requests for additional work.

12. Contracts of the Agency:

a. Approval of Third Party Contracts. The Department specifically reserves the right to review and approve any and all third party contracts with respect to the Project before the Agency executes or obligates itself in any manner requiring the disbursement of Department funds, including consultant and purchase of commodities contracts, or amendments thereto. If the Department chooses to review and approve third party contracts for this Project and the Agency fails to obtain such approval, that shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same. If Federal Transit Administration (FTA) funds are used in the Project, the Department must exercise the right to third party contract review.

b. Procurement of Commodities or Contractual Services. It is understood and agreed by the Parties hereto that participation by the Department in a project with the Agency, where said project involves the purchase of commodities or contractual services where purchases or costs exceed the Threshold Amount for CATEGORY TWO per Section 287.017, Florida Statutes, is contingent on the Agency complying in full with the provisions of Section 287.057, Florida Statutes. The Agency's Authorized Official shall certify to the Department that the Agency's purchase of commodities or contractual services has been accomplished in compliance with Section 287.057, Florida Statutes. It shall be the sole responsibility of the Agency to ensure that any obligations made in accordance with this Section comply with the current threshold limits. Contracts, purchase orders, task orders, construction change orders, or any other agreement that would result in exceeding the current budget contained in Exhibit "B", Schedule of Financial Assistance, or that is not consistent with the Project description and scope of services contained in Exhibit "A", Project Description and Responsibilities must be approved by the Department prior to Agency execution. Failure to obtain such approval, and subsequent execution of an amendment to the Agreement if required, shall be sufficient cause for nonpayment by the Department, in accordance with this Agreement.

c. Consultants' Competitive Negotiation Act. It is understood and agreed by the Parties to this Agreement that participation by the Department in a project with the Agency, where said project involves a consultant contract for professional services, is contingent on the Agency's full compliance with provisions of Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act. In all cases, the Agency's Authorized Official shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

d. Disadvantaged Business Enterprise (DBE) Policy and Obligation. It is the policy of the Department that DBEs, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The Agency and its contractors agree to ensure that DBEs have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBEs have the opportunity to compete for and perform contracts. The Agency and its contractors and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.
13. Maintenance Obligations. In the event the Project includes construction or the acquisition of commodities then the following provisions are incorporated into this Agreement:

   a. The Agency agrees to accept all future maintenance and other attendant costs occurring after completion of the Project for all improvements constructed or commodities acquired as part of the Project. The terms of this provision shall survive the termination of this Agreement.

14. Sale, Transfer, or Disposal of Department-funded Property:

   a. The Agency will not sell or otherwise transfer or dispose of any part of its title or other interests in real property, facilities, or equipment funded in any part by the Department under this Agreement without prior written approval by the Department.

   b. If a sale, transfer, or disposal by the Agency of all or a portion of Department-funded real property, facilities, or equipment is approved by the Department, the following provisions will apply:

      i. The Agency shall reimburse the Department a proportional amount of the proceeds of the sale of any Department-funded property.

      ii. The proportional amount shall be determined on the basis of the ratio of the Department funding of the development or acquisition of the property multiplied against the sale amount, and shall be remitted to the Department within ninety (90) days of closing of sale.

      iii. Sale of property developed or acquired with Department funds shall be at market value as determined by appraisal or public bidding process, and the contract and process for sale must be approved in advance by the Department.

      iv. If any portion of the proceeds from the sale to the Agency are non-cash considerations, reimbursement to the Department shall include a proportional amount based on the value of the non-cash considerations.

   c. The terms of provisions “a” and “b” above shall survive the termination of this Agreement.

      i. The terms shall remain in full force and effect throughout the useful life of facilities developed, equipment acquired, or Project items installed within a facility, but shall not exceed twenty (20) years from the effective date of this Agreement.

      ii. There shall be no limit on the duration of the terms with respect to real property acquired with Department funds.

15. Single Audit. The administration of Federal or State resources awarded through the Department to the Agency by this Agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or State financial assistance or limit the authority of any state agency inspector general, the State of Florida Auditor General, or any other state official. The Agency shall comply with all audit and audit reporting requirements as specified below.

   Federal Funded:

      a. In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided
through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO), or State of Florida Auditor General.

b. The Agency, a non-Federal entity as defined by 2 CFR Part 200, Subpart F – Audit Requirements, as a subrecipient of a Federal award awarded by the Department through this Agreement, is subject to the following requirements:

i. In the event the Agency expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Agency must have a Federal single or program-specific audit conducted for such fiscal year in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. Exhibit “H”, Audit Requirements for Awards of Federal Financial Assistance, to this Agreement provides the required Federal award identification information needed by the Agency to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining Federal awards expended in a fiscal year, the Agency must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this Agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.

ii. In connection with the audit requirements, the Agency shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.

iii. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards, the Agency is exempt from Federal audit requirements for that fiscal year. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency’s audit period for each applicable audit year. In the event the Agency expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from the Agency’s resources obtained from other than Federal entities).

iv. The Agency must electronically submit to the Federal Audit Clearinghouse (FAC) at https://harvester.census.gov/facweb/ the audit reporting package as required by 2 CFR Part 200, Subpart F – Audit Requirements, within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor’s report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.

v. Within six months of acceptance of the audit report by the FAC, the Department will review the Agency’s audit reporting package, including corrective action plans and
management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this Agreement. If the Agency fails to have an audit conducted in accordance with 2 C.F.R Part 200, Subpart F – Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:

1. Temporarily withhold cash payments pending correction of the deficiency by the Agency or more severe enforcement action by the Department;
2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the Federal award;
4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency);
5. Withhold further Federal awards for the Project or program;
6. Take other remedies that may be legally available.

vi. As a condition of receiving this Federal award, the Agency shall permit the Department or its designee, the CFO, or State of Florida Auditor General access to the Agency’s records, including financial statements, the independent auditor’s working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.

vii. The Department’s contact information for requirements under this part is as follows:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

State Funded:

a. In addition to reviews of audits conducted in accordance with Section 215.97, Florida Statutes, monitoring procedures to monitor the Agency’s use of state financial assistance may include but not be limited to on-site visits by Department staff and/or other procedures, including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to state financial assistance awarded through the Department by this Agreement. By entering into this Agreement, the Agency agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Agency further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, the Department of Financial Services (DFS), or State of Florida Auditor General.

b. The Agency, a “nonstate entity” as defined by Section 215.97, Florida Statutes, as a recipient of state financial assistance awarded by the Department through this Agreement, is subject to the following requirements:

i. In the event the Agency meets the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency must have a State single or project-specific audit conducted for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and
Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Exhibit "G", Audit Requirements for Awards of State Financial Assistance, to this Agreement indicates state financial assistance awarded through the Department by this Agreement needed by the Agency to further comply with the requirements of Section 215.97, Florida Statutes. In determining the state financial assistance expended in a fiscal year, the Agency shall consider all sources of state financial assistance, including state financial assistance received from the Department by this Agreement, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

ii. In connection with the audit requirements, the Agency shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(e), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

iii. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, the Agency is exempt for such fiscal year from the state single audit requirements of Section 215.97, Florida Statutes. However, the Agency must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Agency's audit period for each applicable audit year. In the event the Agency does not meet the audit threshold requirements established by Section 215.97, Florida Statutes, in a fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the Agency's resources (i.e., the cost of such an audit must be paid from the Agency's resources obtained from other than State entities).

iv. In accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, copies of financial reporting packages required by this Agreement shall be submitted to:

Florida Department of Transportation
Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0405
FDOTSingleAudit@dot.state.fl.us

And

State of Florida Auditor General
Local Government Audits/342
111 West Madison Street, Room 401
Tallahassee, FL 32399-1450
Email: flaud_gen_local.govt@aud.state.fl.us

v. Any copies of financial reporting packages, reports, or other information required to be submitted to the Department shall be submitted timely in accordance with Section 215.97, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

vi. The Agency, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or
10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date the reporting package was delivered to the Agency in correspondence accompanying the reporting package.

vii. Upon receipt, and within six months, the Department will review the Agency's financial reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate corrective action on all deficiencies has been taken pertaining to the state financial assistance provided through the Department by this Agreement. If the Agency fails to have an audit conducted consistent with Section 215.97, Florida Statutes, the Department may take appropriate corrective action to enforce compliance.

viii. As a condition of receiving state financial assistance, the Agency shall permit the Department or its designee, DFS, or the Auditor General access to the Agency's records, including financial statements, the independent auditor's working papers, and project records as necessary. Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is complete or the dispute is resolved.

c. The Agency shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued and shall allow the Department or its designee, DFS, or State of Florida Auditor General access to such records upon request. The Agency shall ensure that the audit working papers are made available to the Department or its designee, DFS, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Department.

16. Notices and Approvals. Notices and approvals referenced in this Agreement must be obtained in writing from the Parties' respective Administrators or their designees.

17. Restrictions, Prohibitions, Controls and Labor Provisions:

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

b. **Discriminatory Vendor List.** In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, kept by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

c. **Non-Responsible Contractors.** An entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied, or have further been determined by the Department to be a non-responsible contractor, may not submit a bid or perform work for the construction or repair of a public building or public work on a contract with the Agency.
d. Prohibition on Using Funds for Lobbying. No funds received pursuant to this Agreement may be expended for lobbying the Florida Legislature, judicial branch, or any state agency, in accordance with Section 216.347, Florida Statutes.

e. Unauthorized Aliens. The Department shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.

f. Procurement of Construction Services. If the Project is procured pursuant to Chapter 255, Florida Statutes, for construction services and at the time of the competitive solicitation for the Project, 50 percent or more of the cost of the Project is to be paid from state-appropriated funds, then the Agency must comply with the requirements of Section 255.0991, Florida Statutes.

g. E-Verify. The Agency shall:

   i. Utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of the contract; and

   ii. Expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

h. Design Services and Construction Engineering and Inspection Services. If the Project is wholly or partially funded by the Department and administered by a local governmental entity, except for a seaport listed in Section 311.09, Florida Statutes, the entity performing design and construction engineering and inspection services may not be the same entity.

18. Indemnification and Insurance:

   a. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The Agency guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Agency or any subcontractor, in connection with this Agreement. Additionally, to the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Agency shall indemnify and hold harmless the State of Florida, Department of Transportation, including the Department’s officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney’s fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Agency and persons employed or utilized by the Agency in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency’s sovereign immunity. Additionally, the Agency agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/subconsultants who perform work in connection with this Agreement:

   “To the fullest extent permitted by law, the Agency’s contractor/consultant shall indemnify and hold harmless the Agency and the State of Florida, Department of Transportation, including
the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Agency's sovereign immunity."

b. The Agency shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subletting any of the work, ensure that the subcontractor(s) and subconsultant(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation Insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships, or partners are covered by insurance required under Florida's Workers' Compensation law.

c. If the Agency elects to self-perform the Project, then the Agency may self-insure. If the Agency elects to hire a contractor or consultant to perform the Project, then the Agency shall carry, or cause its contractor or consultant to carry, Commercial General Liability insurance providing continuous coverage for all work or operations performed under this Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. The Agency shall cause, or cause its contractor or consultant to cause, the Department to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than $1,000,000 for each occurrence and not less than a $5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement, and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention unless the Agency is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

d. When the Agreement includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, the Agency shall, or cause its contractor to, in addition to the insurance coverage required above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named Insured and where the limits are not less
than $2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than $6,000,000. The railroad shall also be added along with the Department as an Additional Insured on the policy/ies procured pursuant to the paragraph above. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, both the Department and the railroad shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through final acceptance of the work. Both the Department and the railroad shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department’s approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.

e. When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department as an Additional Insured on the Commercial General Liability policy/ies procured above.

19. Miscellaneous:

a. Environmental Regulations. The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations, and will reimburse the Department for any loss incurred in connection therewith.

b. Non-Admission of Liability. In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

c. Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law.

d. Agency not an agent of Department. The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.

e. Bonus or Commission. By execution of the Agreement, the Agency represents that it has not paid and, also agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

f. Non-Contravention of State Law. Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision or perform any act or do any other thing in contravention of any applicable state law. If any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing so that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

g. Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same Agreement. A facsimile or electronic transmission of this Agreement with a signature on behalf of a party will be legal and binding on such party.
h. Federal Award Identification Number (FAIN). If the FAIN is not available prior to execution of the Agreement, the Department may unilaterally add the FAIN to the Agreement without approval of the Agency and without an amendment to the Agreement. If this occurs, an updated Agreement that includes the FAIN will be provided to the Agency and uploaded to the Department of Financial Services' Florida Accountability Contract Tracking System (FACTS).

i. Inspector General Cooperation. The Agency agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

j. Law, Forum, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the contract and Florida law, the laws of Florida shall prevail. The Agency agrees to waive forum and venue and that the Department shall determine the forum and venue in which any dispute under this Agreement is decided.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written above.

AGENCY Lee County Port Authority
By: __________________________
Name: _________________________
Title: __________________________

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
By: __________________________
Name: John M. Kubler, P.E.
Title: Director of Transportation Development

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
Legal Review:

Don Conway, Contracts Attorney

11/4/19
EXHIBIT A

Project Description and Responsibilities

A. Project Description (description of Agency’s project to provide context, description of project components funded via this Agreement (if not the entire project)): Southwest Florida International Airport Terminal Expansion and Security Improvements

B. Project Location (limits, city, county, map): Southwest Florida International Airport/Fort Myers, FL/Lee

C. Project Scope (allowable costs: describe project components, improvement type/service type, approximate timeline, project schedule, project size): Terminal Building Expansion and Security Improvements. (Design/Construct/Expand/Improve): As required by 215.971, F.S., this scope of work includes but is not limited to consultant and design fees, survey, aerial photography and geotechnical costs, permitting, construction inspection, environmental mitigation, construction administration, material and building commissioning and testing costs, and associated professional PM/CM/GC services. Construction elements and subtrades associated with this project include mobilization and demobilization, maintenance of traffic, site preparation, erosion control, tree clearing, site grading, underground utilities, fuel lines, demolition, pavement (access roadways, parking lots, and sidewalks, taxiways, aprons), storm drainage, primary power supply, back-up power supply, building (demolition, foundations, building structure, structural steel, exterior enclosure, roof systems, interior partitions, interior construction, signage, stairs, interior finishes, seating, plantings, concessions, flooring, dynamic glass, baggage systems, business lounges, kiosks, canopies, hydrant fueling, administration offices, elevators, conveying systems, MEP, drainage, specialty systems, gates, equipment, furnishings and fire prevention and protection), remote loading dock, passenger boarding bridges, federal inspection station upgrades/expansion, all code and permit requirements, software, security screening checkpoint equipment, pavement markings, lighting and signage, fencing and gates, landscaping/irrigation (including outdoor lighting), and indoor/outdoor security systems, communications antenna and tower, including all materials, equipment, labor, and incidental costs required to purchase, install, and commission the complete Terminal Expansion and Security Improvements project. The Sponsor will comply with Aviation Program Assurances.

D. Deliverable(s): Terminal Expansion and Security Improvements

The project scope identifies the ultimate project deliverables. Deliverables for requisition, payment and invoice purposes will be the incremental progress made toward completion of project scope elements. Supporting documentation will be quantifiable, measurable, and verifiable, to allow for a determination of the amount of incremental progress that has been made, and provide evidence that the payment requested is commensurate with the accomplished incremental progress and costs incurred by the Agency.

E. Unallowable Costs (including but not limited to):

F. Transit Operating Grant Requirements (Transit Only):

Transit Operating Grants billed as an operational subsidy will require an expenditure detail report from the Agency that matches the invoice period. The expenditure detail, along with the progress report, will be the required deliverables for Transit Operating Grants.
EXHIBIT B

Schedule of Financial Assistance

Funds awarded to the agency and required matching funds pursuant to this agreement consist of the following:

A. Fund Type and Fiscal Year:

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<th>State Fiscal Year</th>
<th>Object Code</th>
<th>CSFA/CFDA Number</th>
<th>CSFA/CFDA Title or Funding Source Description</th>
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Total Financial Assistance $147,487,980

B. Estimate of Project Costs by Grant Phase:

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*Shifting items between these grant phases requires execution of an Amendment to the Public Transportation Grant Agreement.

BUDGET/COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:

I certify that the cost for each line item budget category (grant phase) has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, Florida Statutes. Documentation is on file evidencing the methodology used and the conclusions reached.

Kristi A. Smith, PLS
Department Grant Manager Name

[Signature]

[Date] October 31, 2019
EXHIBIT C

TERMS AND CONDITIONS OF CONSTRUCTION

1. Design and Construction Standards and Required Approvals.
   a. The Agency understands that it is responsible for the preparation and certification of all design plans for the Project. The Agency shall hire a qualified consultant for the design phase of the Project or, if applicable, the Agency shall require their design-build contractor or construction management contractor to hire a qualified consultant for the design phase of the Project.
   b. Execution of this Agreement by both Parties shall be deemed a Notice to Proceed to the Agency for the design phase or other non-construction phases of the Project. If the Project involves a construction phase, the Agency shall not begin the construction phase of the Project until the Department issues a Notice to Proceed for the construction phase. Prior to commencing the construction work described in this Agreement, the Agency shall request a Notice to Proceed from the Department’s Project Manager, Kristi A. Smith, PLS (email: kristi.smith@dot.state.fl.us), or from an appointed designee. Any construction phase work performed prior to the execution of this required Notice to Proceed is not subject to reimbursement.
   c. The Agency will provide one (1) copy of the final design plans and specifications and final bid documents to the Department’s Project Manager prior to bidding or commencing construction of the Project.
   d. The Agency shall require the Agency’s contractor to post a payment and performance bond in accordance with applicable law(s).
   e. The Agency shall be responsible to ensure that the construction work under this Agreement is performed in accordance with the approved construction documents, and that the construction work will meet all applicable Agency and Department standards.
   f. Upon completion of the work authorized by this Agreement, the Agency shall notify the Department in writing of the completion of construction of the Project; and for all design work that originally required certification by a Professional Engineer, this notification shall contain an Engineer’s Certification of Compliance, signed and sealed by a Professional Engineer, the form of which is attached to this Exhibit. The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans or specifications, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation.

2. Construction on the Department’s Right of Way. If the Project involves construction on the Department’s right-of-way, then the following provisions apply to any and all portions of the Project that are constructed on the Department’s right-of-way:
   a. The Agency shall hire a qualified contractor using the Agency’s normal bid procedures to perform the construction work for the Project. The Agency must certify that the installation of the Project is completed by a Contractor prequalified by the Department as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2016), as amended, unless otherwise approved by the Department in writing or the Contractor exhibits past project experience in the last five years that are comparable in scale, composition, and overall quality to the site characterized within the scope of services of this Project.
b. Construction Engineering Inspection (CEI) services will be provided by the Agency by hiring a Department prequalified consultant firm including one individual that has completed the Advanced Maintenance of Traffic Level Training, unless otherwise approved by the Department in writing. The CEI staff shall be present on the Project at all times that the contractor is working. Administration of the CEI staff shall be under the responsible charge of a State of Florida Licensed Professional Engineer who shall provide the certification that all design and construction for the Project meets the minimum construction standards established by Department. The Department shall approve all CEI personnel. The CEI firm shall not be the same firm as that of the Engineer of Record for the Project. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction of the Project. Notwithstanding the foregoing, the Department may issue a written waiver of the CEI requirement for portions of Projects involving the construction of bus shelters, stops, or pads.

c. The Project shall be designed and constructed in accordance with the latest edition of the Department’s Standard Specifications for Road and Bridge Construction, the Department Design Standards, and the Manual of Uniform Traffic Control Devices (MUTCD). The following guidelines shall apply as deemed appropriate by the Department: the Department Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, Florida Design Manual, Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the “Florida Green Book”), and the Department Traffic Engineering Manual. The Agency will be required to submit any construction plans required by the Department for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Agency shall be required to notify the Department of the changes and receive approval from the Department prior to the changes being constructed. The Agency shall maintain the area of the Project at all times and coordinate any work needs of the Department during construction of the Project.

d. The Agency shall notify the Department a minimum of 48 hours before beginning construction within Department right-of-way. The Agency shall notify the Department should construction be suspended for more than 5 working days. The Department contact person for construction is ____. 

e. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic (MOT) throughout the course of the Project in accordance with the latest edition of the Department Standard Specifications, section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the Department Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from the Department Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.

f. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.

g. The Agency will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.

h. It is hereby agreed by the Parties that this Agreement creates a permissive use only and all improvements located on the Department’s right-of-way resulting from this Agreement shall become the property of the Department. Neither the granting of the permission to use the Department right of way nor the placing of facilities upon the Department property shall operate to create or vest any property right to or in the Agency, except as may otherwise be provided in separate agreements. The Agency shall not acquire any right, title, interest or
estate in Department right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency’s use, occupancy or possession of Department right of way. The Parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to Chapter 163, F.S.

i. The Agency shall not cause any liens or encumbrances to attach to any portion of the Department’s property, including but not limited to, the Department’s right-of-way.

j. The Agency shall perform all required testing associated with the design and construction of the Project. Testing results shall be made available to the Department upon request. The Department shall have the right to perform its own independent testing during the course of the Project.

k. The Agency shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Coast Guard and local governmental entities.

l. If the Department determines a condition exists which threatens the public’s safety, the Department may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. The Agency shall bear all construction delay costs incurred by the Department.

m. The Agency shall be responsible to maintain and restore all features that might require relocation within the Department right-of-way.

n. The Agency will be solely responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.

o. The acceptance procedure will include a final "walk-through" by Agency and Department personnel. Upon completion of construction, the Agency will be required to submit to the Department final as-built plans and an engineering certification that construction was completed in accordance to the plans. Submittal of the final as-built plans shall include one complete set of the signed and sealed plans on 11” X 17” plan sheets and an electronic copy prepared in Portable Document Format (PDF). Prior to the termination of this Agreement, the Agency shall remove its presence, including, but not limited to, all of the Agency’s property, machinery, and equipment from Department right-of-way and shall restore those portions of Department right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.

p. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department’s written notice, or such other time as the Agency and the Department mutually agree to in writing, to complete the Project and provide the Department with written notice of the same (the “Notice of Completion”). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department, within its discretion may: 1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency’s sole cost and expense,
without Department liability to the Agency for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.

q. The Agency shall implement best management practices for erosion and pollution control to prevent violation of state water quality standards. The Agency shall be responsible for the correction of any erosion, shoaling, or water quality problems that result from the construction of the Project.

r. Portable Traffic Monitoring Site (PTMS) or a Telemetry Traffic Monitoring Site (TTMS) may exist within the vicinity of your proposed work. It is the responsibility of the Agency to locate and avoid damage to these sites. If a PTMS or TTMS is encountered during construction, the Department must be contacted immediately.

s. During construction, highest priority must be given to pedestrian safety. If permission is granted to temporarily close a sidewalk, it should be done with the express condition that an alternate route will be provided, and shall continuously maintain pedestrian features to meet Americans Disability Act (ADA) standards.

t. Restricted hours of operation will be as follows, unless otherwise approved by the Department’s District Construction Engineer or designee (insert hours and days of the week for restricted operation):

u. Lane closures on the state road system must be coordinated with the Public Information Office at least two weeks prior to the closure. The contact information for the Department’s Public Information Office is:

Insert District PIO contact info:

**Note:** (Highlighted sections indicate need to confirm information with District Office or appropriate DOT person managing the Agreement)

3. **Engineer's Certification of Compliance.** The Agency shall complete and submit the following Notice of Completion and if applicable Engineer's Certification of Compliance to the Department upon completion of the construction phase of the Project.
ENGINEER'S CERTIFICATION OF COMPLIANCE

PUBLIC TRANSPORTATION GRANT AGREEMENT
BETWEEN
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and 

PROJECT DESCRIPTION: 

DEPARTMENT CONTRACT NO.: 

FINANCIAL MANAGEMENT NO.: 

In accordance with the Terms and Conditions of the Public Transportation Grant Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish the Department a set of "as-built" plans for construction on the Department's Right of Way certified by the Engineer of Record/CEI.

By: ___________________________ , P.E.

SEAL:

Name: ___________________________

Date: ___________________________
EXHIBIT D

AGENCY RESOLUTION

PLEASE SEE ATTACHED
A. General.

1. The assurances herein shall form an integral part of the Agreement between the Department and the Agency.

2. These assurances delineate the obligations of the Parties to this Agreement to ensure their commitment and compliance with specific provisions of Exhibit “A”, Project Description and Responsibilities, and Exhibit “B”, Schedule of Financial Assistance, as well as serving to protect public investment in public-use airports and the continued viability of the Florida Aviation System.

3. The Agency shall comply with the assurances as specified in this Agreement.

4. The terms and assurances of this Agreement shall remain in full force and effect throughout the useful life of a facility developed; equipment acquired; or Project items installed within a facility for an airport development or noise compatibility program project, but shall not exceed 20 years from the effective date of this Agreement.

5. There shall be no limit on the duration of the terms and assurances of this Agreement regarding Exclusive Rights and Airport Revenue so long as the property is used as a public airport.

6. There shall be no limit on the duration of the terms and assurances of this Agreement with respect to real property acquired with funds provided by this Agreement.

7. Subject to appropriations, the Department shall continue to comply with its financial commitment to this Project under the terms of this Agreement, until such time as the Department may determine that the Agency has failed to comply with the terms and assurances of this Agreement.

8. An Agency that has been determined by the Department to have failed to comply with either the terms of these Assurances, or the terms of the Agreement, or both, shall be notified, in writing, by the Department, identifying the specifics of the non-compliance and any corrective action by the Agency to remedy the failure.

9. Failure by the Agency to satisfactorily remedy the non-compliance shall absolve the Department’s continued financial commitment to this Project and immediately require the Agency to repay the Department the full amount of funds expended by the Department on this Project.

10. Any history of failure to comply with the terms and assurances of an Agreement will jeopardize the Agency’s eligibility for further state funding of airport projects by the Department.

B. Agency Compliance Certification.

1. General Certification. The Agency hereby certifies, with respect to this Project, it will comply, within its authority, with all applicable, current laws and rules of the State of Florida and applicable local governments, as well as Department policies, guidelines, and requirements, including but not limited to, the following (latest version of each document):

   a. Florida Statutes (F.S.)
      - Chapter 163, F.S., Intergovernmental Programs
      - Chapter 329, F.S., Aircraft: Title; Liens; Registration; Liens
      - Chapter 330, F.S., Regulation of Aircraft, Pilots, and Airports
      - Chapter 331, F.S., Aviation and Aerospace Facilities and Commerce
      - Chapter 332, F.S., Airports and Other Air Navigation Facilities
      - Chapter 333, F.S., Airport Zoning
b. **Florida Administrative Code (FAC)**
   - Chapter 73C-41, FAC, Community Planning: Governing the Procedure for the Submittal and Review of Local Government Comprehensive Plans and Amendments
   - Chapter 14-60, FAC, Airport Licensing, Registration, and Airspace Protection
   - Section 62-256.300, FAC, Open Burning, Prohibitions
   - Section 62-701.320(13), FAC, Solid Waste Management Facility Permit Requirements, General, Airport Safety

   **c. Local Government Requirements**
   - Airport Zoning Ordinance
   - Local Comprehensive Plan

   **d. Department Requirements**
   - Eight Steps of Building a New Airport
   - Florida Airport Revenue Use Guide
   - Florida Aviation Project Handbook
   - Guidebook for Airport Master Planning
   - Airport Compatible Land Use Guidebook

2. **Construction Certification.** The Agency hereby certifies, with respect to a construction-related project, that all design plans and specifications will comply with applicable federal, state, local, and professional standards, as well as Federal Aviation Administration (FAA) Advisory Circulars (AC's) and FAA issued waivers thereto, including but not limited to, the following:

   **a. Federal Requirements**
   - FAA AC 70/7460-1, Obstruction Marking and Lighting
   - FAA AC 150/5300-13, Airport Design
   - FAA AC 150/5370-2, Operational Safety on Airports During Construction
   - FAA AC 150/5370-10, Standards for Specifying Construction of Airports

   **b. Local Government Requirements**
   - Local Building Codes
   - Local Zoning Codes

   **c. Department Requirements**
   - Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Commonly Referred to as the “Florida Green Book”)
   - Manual on Uniform Traffic Control Devices
   - Section 14-60.007, FAC, Airfield Standards for Licensed Airports
   - Standard Specifications for Construction of General Aviation Airports
   - Design Guidelines & Minimum Standard Requirements for T-Hangar Projects

3. **Land Acquisition Certification.** The Agency hereby certifies, regarding land acquisition, that it will comply with applicable federal and/or state policies, regulations, and laws, including but not limited to the following:

   **a. Federal Requirements**
   - Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
   - National Environmental Policy of 1969
   - FAA Order 5050.4, National Environmental Policy Act Implementing Instructions for Airport Projects
   - FAA Order 5100.37B, Land Acquisition and Relocation Assistance for Airport Projects

   **b. Florida Requirements**
   - Chapter 73, F.S., Eminent Domain (re: Property Acquired Through Condemnation)
   - Chapter 74, F.S., Proceedings Supplemental to Eminent Domain (re: Condemnation)
C. Agency Authority.

1. Legal Authority. The Agency hereby certifies, with respect to this Agreement, that it has the legal authority to enter into this Agreement and commit to this Project; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the airport sponsor’s governing body authorizing this Agreement, including assurances contained therein, and directing and authorizing the person identified as the official representative of the governing body to act on its behalf with respect to this Agreement and to provide any additional information as may be required.

2. Financial Authority. The Agency hereby certifies, with respect to this Agreement, that it has sufficient funds available for that portion of the Project costs which are not paid by the U.S. Government or the State of Florida; that it has sufficient funds available to assure future operation and maintenance of items funded by this Project, which it will control; and that authority has been granted by the airport sponsor governing body to commit those funds to this Project.

D. Agency Responsibilities. The Agency hereby certifies it currently complies with or will comply with the following responsibilities:

1. Accounting System.
   a. The Agency shall create and maintain a separate account to document all of the financial transactions related to the airport as a distinct entity.
   
   b. The accounting records shall be kept by the Agency or its authorized representative in accordance with Generally Accepted Accounting Principles and in an accounting system that will facilitate an effective audit in accordance with the 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Section 215.97, F.S., Florida Single Audit Act.
   
   c. The Department has the right to audit and inspect all financial records of the Agency upon reasonable notice.

2. Good Title.
   a. The Agency holds good title, satisfactory to the Department, to the airport or site thereof, or gives assurance, satisfactory to the Department, that good title will be obtained.
   
   b. For noise compatibility program projects undertaken on the airport sponsor’s property, the Agency holds good title, satisfactory to the Department, to that portion of the property upon which state funds will be expended, or gives assurance, satisfactory to the Department, that good title will be obtained.

   a. The Agency shall not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms and assurances of this Agreement without the written approval of the Department. Further, the Agency shall act promptly to acquire, extinguish, or modify, in a manner acceptable to the Department, any outstanding rights or claims of right of others which would interfere with such performance by the Agency.
   
   b. If an arrangement is made for management and operation of the airport by any entity or person other than the Agency or an employee of the Agency, the Agency shall reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with the terms and assurances of this Agreement.

a. For airport hazards located on airport controlled property, the Agency shall clearly and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

b. For airport hazards not located on airport controlled property, the Agency shall work in conjunction with the governing public authority or private land owner of the property to clear and protect terminal airspace required for instrument and visual operations at the airport (including established minimum flight altitudes) by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. The Agency may enter into an agreement with surrounding property owners or pursue available legal remedies to remove potential hazards to air navigation.

5. Airport Compatible Land Use.

a. The Agency assures that appropriate airport zoning ordinances are in place consistent with Section 333.03, F.S., or if not in place, that it will take appropriate action necessary to ensure local government adoption of an airport zoning ordinance or execution of an interlocal agreement with another local government body having an airport zoning ordinance, consistent with the provisions of Section 333.03, F.S.

b. The Agency assures that it will disapprove or oppose any attempted alteration or creation of objects, natural or man-made, dangerous to navigable airspace or that would adversely affect the current or future levels of airport operations.

c. The Agency assures that it will disapprove or oppose any attempted change in local land use development regulations that would adversely affect the current or future levels of airport operations by creation or expansion of airport incompatible land use areas.


a. The Agency assures the Project is consistent with the currently existing and planned future land use development plans approved by the local government having jurisdictional responsibility for the area surrounding the airport.

b. The Agency assures that it has given fair consideration to the interest of local communities and has had reasonable consultation with those parties affected by the Project.

c. The Agency shall consider and take appropriate actions, if deemed warranted by the Agency, to adopt the current, approved Airport Master Plan into the local government comprehensive plan.

7. Consistency with Airport Master Plan and Airport Layout Plan.

a. The Agency assures that the project, covered by the terms and assurances of this Agreement, is consistent with the most current Airport Master Plan.

b. The Agency assures that the Project, covered by the terms and assurances of this Agreement, is consistent with the most current, approved Airport Layout Plan (ALP), which shows:

1) The boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Agency for airport purposes and proposed additions thereto;
2) The location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and
3) The location of all existing and proposed non-aviation areas on airport property and of all existing improvements thereon.
c. The Agency assures that it will not make or permit any changes or alterations on the airport or any of its facilities that are not consistent with the Airport Master Plan and the Airport Layout Plan, as approved by the Department.

d. Original Airport Master Plans and Airport Layout Plans and each amendment, revision, or modification thereof, will be subject to the approval of the Department.


a. The Agency assures that it will develop and maintain a cost-feasible Airport financial plan to accomplish the projects necessary to achieve the proposed airport improvements identified in the Airport Master Plan and depicted in the Airport Layout Plan, and any updates thereto. The Agency’s Airport financial plan must comply with the following conditions:

1) The Airport financial plan will be a part of the Airport Master Plan.
2) The Airport financial plan will realistically assess project phasing considering availability of state and local funding and likelihood of federal funding under the FAA’s priority system.
3) The Airport financial plan will not include Department funding for projects that are inconsistent with the local government comprehensive plan.

b. All Project cost estimates contained in the Airport financial plan shall be entered into and kept current in the Florida Aviation Database (FAD) Joint Automated Capital Improvement Program (JACIP) website.

9. Airport Revenue. The Agency assures that all revenue generated by the airport will be expended for capital improvement or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.

10. Fee and Rental Structure.

a. The Agency assures that it will maintain a fee and rental structure for facilities and services at the airport that it will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.

b. If this Agreement results in a facility that will be leased or otherwise produce revenue, the Agency assures that the price charged for that facility will be based on the market value.


a. If the airport owner or operator and a person or entity that owns an aircraft or an airport tenant or potential tenant agree that an aircraft hangar or tenant-specific facility, respectively, is to be constructed on airport property for aircraft storage or tenant use at the expense of the aircraft owner or tenant, the airport owner or operator may grant to the aircraft owner or tenant of the facility a lease that is subject to such terms and conditions on the facility as the airport owner or operator may impose, subject to approval by the Department.

b. The price charged for said lease will be based on market value, unless otherwise approved by the Department.


a. The Agency assures that it will make the airport available as an airport for public use on reasonable terms without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public.

1) The Agency may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
2) The Agency may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

b. The Agency assures that each airport Fixed-Based Operator (FBO) shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other FBOs making the same or similar uses of such airport and utilizing the same or similar facilities.

13. Air and Water Quality Standards. The Agency assures that all projects involving airport location, major runway extension, or runway location will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards.


a. The Agency assures that the airport and all facilities, which are necessary to serve the aeronautical users of the airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation, as well as minimum standards established by the Department for State of Florida licensing as a public-use airport.

1) The Agency assures that it will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.

2) Except in emergency situations, any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Department.

3) The Agency assures that it will have arrangements for promptly notifying airmen of any condition affecting aeronautical use of the airport.

b. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when adverse weather conditions interfere with safe airport operations.

15. Federal Funding Eligibility.

a. The Agency assures it will take appropriate actions to maintain federal funding eligibility for the airport and it will avoid any action that renders the airport ineligible for federal funding.

b. If the Agency becomes ineligible for federal funding of airport projects, such determination will render the Agency ineligible for state funding of airport projects.


a. The Agency assures that it will begin making expenditures or incurring obligations pertaining to this Project within one year after the effective date of this Agreement.

b. The Agency may request a one-year extension of this one-year time period, subject to approval by the Department District Secretary or designee.

c. Failure of the Agency to make expenditures, incur obligations or receive an approved extension may allow the Department to terminate this Agreement.

17. Exclusive Rights. The Agency assures that it will not permit any exclusive right for use of the airport by any person providing, or intending to provide, aeronautical services to the public.


a. The Agency assures that it will not grant or allow general easement or public access that opens onto or crosses the airport runways, taxiways, flight line, passenger facilities, or any area used for emergency
equipment, fuel, supplies, passengers, mail and freight, radar, communications, utilities, and landing systems, including but not limited to flight operations, ground services, emergency services, terminal facilities, maintenance, repair, or storage, except for those normal airport providers responsible for standard airport daily services or during special events at the airport open to the public with limited and controlled access.

b. The Agency assures that it will not grant or allow general easement or public access to any portion of the airfield from adjacent real property which is not owned, operated, or otherwise controlled by the Agency without prior Department approval.

19. Retention of Rights and Interests. The Agency will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the real property shown as airport owned or controlled on the current airport layout plan without prior written approval by the Department. It will not sell, lease, encumber, terminate, waive, or otherwise transfer or dispose of any part of its title, rights, or other interest in existing noise easements or avigation easements on any property, airport or non-airport, without prior written approval by the Department. These assurances shall not limit the Agency’s right to lease airport property for airport-compatible purposes.


a. The Department has the right to disapprove the Agency’s employment of consultants, contractors, and subcontractors for all or any part of this Project if the specific consultants, contractors, or subcontractors have a record of poor project performance with the Department.

b. Further, the Department maintains the right to disapprove the proposed Project scope and cost of professional services.

21. Planning Projects. For all planning projects or other aviation studies, the Agency assures that it will:

a. Execute the project per the approved project narrative or with approved modifications.

b. Furnish the Department with such periodic project and work activity reports as indicated in the approved scope of services.

c. Make such project materials available for public review, unless exempt from public disclosure.

   1) Information related to airport security is considered restricted information and is exempt from public dissemination per Sections 119.071(3) and 331.22 F.S.

   2) No materials prepared under this Agreement shall be subject to copyright in the United States or any other country.

d. Grant the Department unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this Agreement.

e. If the Project involves developing an Airport Master Plan or an Airport Layout Plan, and any updates thereto, it will be consistent with provisions of the Florida Aviation System Plan, will identify reasonable future growth of the airport and the Agency will comply with the Department airport master planning guidebook, including:

   1) Provide copies, in electronic and editable format, of final Project materials to the Department, including computer-aided drafting (CAD) files of the Airport Layout Plan.

   2) Develop a cost-feasible financial plan, approved by the Department, to accomplish the projects described in the Airport Master Plan or depicted in the Airport Layout Plan, and any updates thereto. The cost-feasible financial plan shall realistically assess Project phasing considering availability of state and local funding and federal funding under the FAA’s priority system.

   3) Enter all projects contained in the cost-feasible plan in the Joint Automated Capital Improvement Program (JACIP).
f. The Agency understands and agrees that Department approval of this Agreement or any planning material developed as part of this Agreement does not constitute or imply any assurance or commitment on the part of the Department to approve any pending or future application for state aviation funding.

g. The Agency will submit master planning draft and final deliverables for Department and, if required, FAA approval prior to submitting any invoices to the Department for payment.

22. Land Acquisition Projects. For the purchase of real property, the Agency assures that it will:

a. Laws. Acquire the land in accordance with federal and/or state laws governing such action.

b. Administration. Maintain direct control of Project administration, including:

1) Maintain responsibility for all related contract letting and administrative procedures related to the purchase of real property.
2) Secure written Department approval to execute each agreement for the purchase of real property with any third party.
3) Ensure a qualified, State-certified general appraiser provides all necessary services and documentation.
4) Furnish the Department with a projected schedule of events and a cash flow projection within 20 calendar days after completion of the review appraisal.
5) Establish a Project account for the purchase of the land.
6) Collect and disburse federal, state, and local project funds.

c. Reimbursable Funds. If funding conveyed by this Agreement is reimbursable for land purchase in accordance with Chapter 332, F.S., the Agency shall comply with the following requirements:

1) The Agency shall apply for a FAA Airport Improvement Program grant for the land purchase within 60 days of executing this Agreement.
2) If federal funds are received for the land purchase, the Agency shall notify the Department, in writing, within 14 calendar days of receiving the federal funds and is responsible for reimbursing the Department within 30 calendar days to achieve normal project federal, state, and local funding shares per Chapter 332, F.S.
3) If federal funds are not received for the land purchase, the Agency shall reimburse the Department within 30 calendar days after the reimbursable funds are due in order to achieve normal project state and local funding shares as described in Chapter 332, F.S.
4) If federal funds are not received for the land purchase and the state share of the purchase is less than or equal to normal state and local funding shares per Chapter 332, F.S., when reimbursable funds are due, no reimbursement to the Department shall be required.

d. New Airport. If this Project involves the purchase of real property for the development of a new airport, the Agency assures that it will:

1) Apply for federal and state funding to construct a paved runway, associated aircraft parking apron, and connecting taxiway within one year of the date of land purchase.
2) Complete an Airport Master Plan within two years of land purchase.
3) Complete airport construction for basic operation within 10 years of land purchase.

e. Use of Land. The Agency assures that it shall use the land for aviation purposes in accordance with the terms and assurances of this Agreement within 10 years of acquisition.

f. Disposal of Land. For the disposal of real property the Agency assures that it will comply with the following:

1) For land purchased for airport development or noise compatibility purposes, the Agency shall, when the land is no longer needed for such purposes, dispose of such land at fair market value and/or make available to the Department an amount equal to the state's proportionate share of its market value.
2) Land will be considered to be needed for airport purposes under this assurance if:

   a) It serves aeronautical purposes such as a runway protection zone or as a noise buffer.
   b) Revenue from uses of such land contributes to airport financial self-sufficiency.

3) Disposition of land under Sections D.22.f.1. or D.22.f.2. of this Exhibit, above, shall be subject to retention or reservation of any interest or right therein needed to ensure such land will only be used for purposes compatible with noise levels related to airport operations.

4) Revenues from the sale of such land must be accounted for as outlined in Section D.1. of this Exhibit, and expended as outlined in Section D.9. of this Exhibit.

23. Construction Projects. The Agency assures that it will:

   a. Project Certifications. Certify Project compliances, including:

      1) Consultant and contractor selection comply with all applicable federal, state and local laws, rules, regulations, and policies.
      2) All design plans and specifications comply with federal, state, and professional standards and applicable FAA advisory circulars, as well as the minimum standards established by the Department for State of Florida licensing as a public-use airport.
      3) Completed construction complies with all applicable local building codes.
      4) Completed construction complies with the Project plans and specifications with certification of that fact by the Project Engineer.

   b. Design Development. For the plans, specifications, construction contract documents, and any and all other engineering, construction, and contractual documents produced by the Engineer, which are hereinafter collectively referred to as "plans", the Engineer will certify that:

      1) The plans shall be developed in accordance with sound engineering and design principles, and with generally accepted professional standards.
      2) The plans shall be consistent with the intent of the Project as defined in Exhibit A and Exhibit B of this Agreement.
      3) The Project Engineer shall perform a review of the certification requirements listed in Section B.2. of this Exhibit, Construction Certification, and make a determination as to their applicability to this Project.
      4) Development of the plans shall comply with all applicable laws, ordinances, zoning and permitting requirements, public notice requirements, and other similar regulations.

   c. Inspection and Approval. The Agency assures that:

      1) The Agency will provide and maintain competent technical supervision at the construction site throughout the Project to assure that the work conforms to the plans, specifications, and schedules approved by the Department, as applicable, for the Project.
      2) The Agency assures that it will allow the Department to inspect the work and that it will provide any cost and progress reporting, as may be required by the Department.
      3) The Agency assures that it will take the appropriate corrective action necessary, as required by the Department, for work which does not conform to the Department standards.

   d. Pavement Preventive Maintenance. The Agency assures that for a project involving replacement or reconstruction of runway or taxiway pavement it has implemented an airport pavement maintenance management program and that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with state financial assistance at the airport.
24. **Noise Mitigation Projects.** The Agency assures that it will:

a. **Government Agreements.** For all noise compatibility projects that are carried out by another unit of local government or are on property owned by a unit of local government other than the Agency, the Agency shall enter into an agreement with that government body.

   1) The local agreement, satisfactory to the Department, shall obligate the unit of local government to the same terms and assurances that apply to the Agency.
   2) The Agency assures that it will take steps to enforce the local agreement if there is substantial non-compliance with the terms of the local agreement.

b. **Private Agreements.** For noise compatibility projects on privately owned property:

   1) The Agency shall enter into an agreement with the owner of that property to exclude future actions against the airport.
   2) The Agency assures that it will take steps to enforce such agreement if there is substantial non-compliance with the terms of the agreement.

*End of Exhibit E*
EXHIBIT F

Contract Payment Requirements
Florida Department of Financial Services, Reference Guide for State Expenditures
Cost Reimbursement Contracts

Invoices for cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved agreement budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided.

Listed below are types and examples of supporting documentation for cost reimbursement agreements:

1. Salaries: A payroll register or similar documentation should be submitted. The payroll register should show gross salary charges, fringe benefits, other deductions and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.

2. Fringe Benefits: Fringe Benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

3. Travel: Reimbursement for travel must be in accordance with Section 112.061, Florida Statutes, which includes submission of the claim on the approved State travel voucher or electronic means.

4. Other direct costs: Reimbursement will be made based on paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in Section 273.02, Florida Statutes, for subsequent transfer to the State.

5. In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

6. Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

Contracts between state agencies, and/or contracts between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports.

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address  http://www.myfloridacfo.com/Division/AA/Manuals/Auditing/Reference_Guide_For_State_Expenditures.pdf
EXHIBIT G

STATE FINANCIAL ASSISTANCE (FLORIDA SINGLE AUDIT ACT)

THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

Awarding Agency: Florida Department of Transportation
State Project Title: Aviation Grant Program
  CSFA Number: 55.004
  *Award Amount: $10,679,532

*The award amount may change with amendments

Specific project information for CSFA Number 55.004 is provided at: https://apps.fldfs.com/fsaa/searchCatalog.aspx

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number 55.004 are provided at: https://apps.fldfs.com/fsaa/searchCompliance.aspx

The State Projects Compliance Supplement is provided at: https://apps.fldfs.com/fsaa/compliance.aspx
RESOLUTION #

RESOLUTION FOR
PUBLIC TRANSPORATION GRANT AGREEMENT

A RESOLUTION of the Lee County Port Authority Board of Port Commissioners authorizing the execution of that certain Public Transportation Grant Agreement (PTGA), Financial Project Nos. 441981-1-94-01 and 441981-1-94-02, with the Florida Department of Transportation.

WHEREAS, the Lee County Board of Port Commissioners has the authority to enter into an agreement with the Florida Department of Transportation to undertake a project as authorized by Florida Statute 332, and Florida Administrative Code 14-60;

NOW, THEREFORE, BE IT RESOLVED BY the Board of Port Commissioners, Lee County, Florida:

1. That PTGA, Financial Project Nos. 441981-1-94-01 and 441981-1-94-02, is approved.

2. That the Chair or Vice Chair of the Lee County Board of Port Commissioners is authorized to enter into, modify or terminate the PTGA, Financial Project Nos. 441981-1-94-01 and 441981-1-94-02, with the Florida Department of Transportation.

The foregoing Resolution was offered by Commissioner ____________________________ who motioned for its adoption. The motion was seconded by Commissioner ________________________, and upon being put to a vote, was as follows:

John E. Manning ____________________________
Ray Sandelli ____________________________
Cecil L Pendergrass ____________________________
Frank Mann ____________________________
Brian Hamman ____________________________

DONE AND ADOPTED by the Board of Port Commissioners this ________ day of __________________, 2020.

ATTEST:
CLERK OF THE CIRCUIT COURT
BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

By: ____________________________ By: ____________________________
Deputy Clerk Chair

Approved as to legal form and sufficiency:

By: ____________________________
Office of the Port Authority Attorney
**BOARD OF PORT COMMISSIONERS OF THE LEE COUNTY PORT AUTHORITY**

<table>
<thead>
<tr>
<th>REQUESTED MOTION/PURPOSE</th>
<th>CATEGORY</th>
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</thead>
<tbody>
<tr>
<td>Request Board approve a contract amendment to DeAngelis Diamond Construction, General Construction Manager-General Contractor to extend the contract time to complete six land management Tasks.</td>
<td>16. Consent Agenda</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FUNDING SOURCE</th>
<th>TERM</th>
<th>WHAT ACTION ACCOMPLISHES</th>
</tr>
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<tbody>
<tr>
<td>N/A</td>
<td>September 30, 2020</td>
<td>Provides a contract time extension to complete time sensitive projects.</td>
</tr>
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<table>
<thead>
<tr>
<th>AGENDA</th>
<th>REQUESTOR OF INFORMATION</th>
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<tbody>
<tr>
<td>CEREMONIAL/PUBLIC PRESENTATION</td>
<td>NAME Mark Fisher</td>
</tr>
<tr>
<td>X CONSENT</td>
<td>DIV. Development</td>
</tr>
<tr>
<td>_____ ADMINISTRATIVE</td>
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<thead>
<tr>
<th>BACKGROUND</th>
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<tbody>
<tr>
<td>After competitive selection, a contract with DeAngelis Diamond Construction was entered into on March 15, 2017 for a three-year term as one of two firms to provide on-call General Construction Management/General Contracting (CM-GC) services for the Port Authority. The current Contract approved by the Board “ARTICLE 3 – TERM OF AGREEMENT” states: The term of this Agreement commences on the date first written above (March 15, 2017) and continues for a term of three (3) years from that date (March 15, 2020), or the date the CM/GC completes, and the Authority accepts, any work assigned by a Task Authorization issued before the expiration date, whichever occurs last.”</td>
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<td>(ALL REQUESTS)</td>
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<tr>
<th>BACKGROUND:</th>
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<tbody>
<tr>
<td>As is typical at the end of the standard contract term, there are several assignments that are under way and the completion of these Tasks under this current contract are expected to extend beyond the contract expiration date:</td>
</tr>
</tbody>
</table>

1. RSW Obstruction/Tree Removal
2. Airport Mitigation Park – Prescribed Burns
3. Airport Mitigation Park – Flint Pen Strand Exotic Removal
4. Airport Mitigation Park – Imperial Marsh North Exotic Removal
5. Airport Mitigation Park – Imperial Marsh South Exotic Removal
6. Airport Mitigation Park – Trail Maintenance

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<tbody>
<tr>
<td>These Tasks need to be undertaken with the majority of work occurring in the dry season and then wrapping up during the summer months. In order to provide transparency and allow for amendments to this agreement (if necessary) related only to these six land management/construction projects, the term of this agreement is extended to September 30, 2020</td>
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<tr>
<th>RECOMMENDED APPROVAL</th>
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<tbody>
<tr>
<td>DEPUTY EXEC DIRECTOR</td>
</tr>
<tr>
<td>Mark R. Fisher</td>
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<tr>
<th>SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION</th>
<th>PORT AUTHORITY ACTION:</th>
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<tr>
<td>APPROVED</td>
<td>APPROVED</td>
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<td>APPROVED as AMENDED</td>
<td>APPROVED as AMENDED</td>
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<td>DENIED</td>
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<td>DEFERRED to</td>
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<td>OTHER</td>
<td>OTHER</td>
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</table>
for these Tasks only, to allow for projects completion. No other new projects or Tasks will be assigned to this contract after the original term has ended (March 15, 2020).
Attachment
Contract amendment
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: Contract Time Extension for Ongoing Projects**

(1) **Reasons for Amendment:**

- [ ] Programmed CIP Project(s)  
- [ ] Unforeseen Site Conditions  
- [ ] Design Change  
- [ ] Safety Considerations  
- [ ] Other

(2) **Method of Negotiating Price of Work**

- [ ] Lump Sum  
- [ ] Time and Materials  
- [ ] Unit Prices  
- [ ] Hourly plus expenses  
- [ ] Other

(3) **Method of Negotiating Time of Work**

- [ ] Consultant/Contractor Records  
- [ ] Cost plus fixed fee  
- [ ] Force Account

**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.

**DEANGELIS DIAMOND CONSTRUCTION CM-GC ACCEPTANCE**

Brian Saunders

**FDOT: N/A  FAA: N/A**

- [ ] FDOT Representative
- [ ] FAA Representative

Approved as to Form:

**Port Attorney**

**LEE COUNTY PORT AUTHORITY AUTHORIZATION**

- [ ] By: NA  
  Executive Director or Designee

- [ ] Board Item By:  
  Chair - Lee County Port Authority Board of Port Commissioners
EXHIBIT A – SUBCONSULTANT/SUBCONTRACTOR INFORMATION

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.)

<table>
<thead>
<tr>
<th>Service or Work to be Performed</th>
<th>Name, Address, Phone and e-mail of Individual or Firm</th>
<th>Estimated Dollar Value of Subcontracted Work</th>
<th>DBE, WBE, or MBE (yes or no)</th>
<th>If Yes, Estimated Dollar Value of DBE/WBE/MBE Work</th>
</tr>
</thead>
<tbody>
<tr>
<td>NA</td>
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</table>
Contract Amendment 27

LOQ 16-20 Construction Manager (Acting as General Contractor)

DeAngelis Diamond Construction

This Contract Amendment will extend the contract expiration to provide for continued CM/GC services under Contract No. 7686, approved by the Lee County Board of Port Commissioners on March 9, 2017.

The current Contract approved by the Board states “ARTICLE 3 – TERM OF AGREEMENT: The term of this Agreement commences on the date first written above (March 15, 2017) and continues for a term of three (3) years from that date (March 15, 2020), or the date the CM/GC completes, and the Authority accepts, any work assigned by a Task Authorization issued before the expiration date, whichever occurs last.”

Prior to the end of the contract term, the LCPA plans to initiate Task Authorizations for the six (6) land management/construction projects listed below:

1. RSW Obstruction/Tree Removal
2. Airport Mitigation Park – Prescribed Burns
3. Airport Mitigation Park – Flint Pen Strand Exotic Removal
4. Airport Mitigation Park – Imperial Marsh North Exotic Removal
5. Airport Mitigation Park – Imperial Marsh South Exotic Removal
6. Airport Mitigation Park – Trail Maintenance

The work areas for these 6 projects occur in wetland habitats. The most optimal time to perform land management activities in wetland areas in southwest Florida is during the dry season when water levels are shallow or below ground. This allows for thorough treatment and minimizes the potential for soil disruption caused by the use of heavy equipment. These land management activities are required to be conducted per FAA Part 139 regulations (RSW Obstruction/Tree Removal task) and state/federal wetland impact permit conditions for the RSW Midfield Terminal Complex (Airport Mitigation Park tasks).

The LCPA is currently negotiating the preconstruction/bidding services for these 6 tasks. It is anticipated that the pre-bid meetings for these projects will take place in December 2019. The land management/construction tasks are expected to commence in January 2020. In order to provide transparency and allow for amendments to this agreement (if necessary) related only to these 6 land management/construction projects, the term of this agreement is extended to September 30, 2020, to allow for project completion. No other new projects or Tasks will be assigned to this contract after the original term has ended (March 15, 2020).

This Contract Amendment only extends the contract time for the 6 projects listed above.
## REQUESTED MOTION/PURPOSE
Approve Recognition Agreement recognizing sublease of Page Field Commons retail space to Ross Dress for Less, Inc.

### FUNDING SOURCE
N/A

### TERM
N/A

### WHAT ACTION ACCOMPLISHES
Approves a Recognition Agreement for Page Field Commons sublease with Ross Dress for Less, Inc., and authorizes Vice-Chair’s execution of the Recognition Agreement on behalf of the Board of Port Commissioners.

### CATEGORY
17. Consent Agenda

### ASMC MEETING DATE
12/17/2019

### BoPC MEETING DATE
1/16/2020

### AGENDA:
- [X] CEREMONIAL/PUBLIC PRESENTATION
- [ ] CONSENT
- [ ] ADMINISTRATIVE

### REQUESTOR OF INFORMATION:
- NAME: Gregory S. Hagen
- DIV.: Port Attorney

### BACKGROUND:
Page Field Commons, LLC., formerly RPAI Fort Myers Page Field, LLC, Leasee of Page Field Commons Shopping Center under a November 12, 1997, lease with the Port Authority, has asked the Port Authority to formally recognize its proposed sublease of approximately 25,000 square feet of the Page Field Commons retail tract to Ross Dress for Less, Inc. The sublease will fill approximately half of the space previously occupied by a Toys R Us Store.

### RECOMMENDED APPROVAL

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### SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:
- APPROVED
- APPROVED as AMENDED
- DENIED
- OTHER

### PORT AUTHORITY ACTION:
- APPROVED
- APPROVED as AMENDED
- DENIED
- DEFERRED to
- OTHER
December 11, 2019

VIA E-MAIL and OVERNIGHT MAIL
Gregory S. Hagen, Esq.
Senior Assistant Port Authority Attorney
Lee County Port Authority Attorney's Office
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

Re: Page Field Commons Shopping Center - Recognition Agreement for Ross Dress for Less, Inc.

Dear Greg:

As discussed with Sandra Kokotilo in your office earlier today, I am writing to request that you place the approval of issuance of a Recognition Agreement for a new large lease at Page Field Commons, and to request that this be placed on the Board of Commissioners Agenda for the January 16, 2020 meeting.

This is the lease to Ross Dress For Less, Inc. ("Ross Stores"), which will initially use approximately 23,000 square feet in the Center (with an ability to expand to use 26,400 square feet), which is somewhat more than half of the 48,000 space previously occupied by Toys R' Us Stores. We had previously discussed this lease during the summer when the HomeCentric lease was submitted for approval. Negotiation with Ross Stores took a substantial period of time, and we have very recently finalized the lease negotiations. The Ross Stores lease is now fully negotiated and ready for execution, subject to completion of effective dates, which will be contingent upon timing of Board of Commissioners approval. A copy of the Lease is attached for your review.

I had also previously provided the Tenant the Authority’s form of Recognition Agreement and their in house had requested some changes which you commented on back on October 2nd of this year. I attach that correspondence for your records. A clean version of the proposed Recognition Agreement is also attached to this letter.

The Landlord and Tenant would like to finalize the lease as soon as possible and we are therefore requesting that this matter be placed on the Board of Commissioners Agenda for
January 16, 2020. My recollection is that the HomeCentric lease was placed on a Consent Agenda, and did not require a formal presentation.

As I mentioned to Sandy, negotiations for another lease at Page Field are well under way for most of the remainder of the former Toys R’ Us space. We will get the information on that lease to you as soon as possible. We are pleased that the Center is leasing up well and eager to get it fully occupied.

We are aware of the requirements for signage and construction approvals set forth in your development standards and as we are doing with the HomeCentric lease, will work through Authority staff to obtain those approvals.

I would be pleased to submit any additional information required in order for each of these to be placed on the Board of Commissioner’s agenda on January 16, 2019. Should you have any questions or need any additional information when you review the attachments, please let me know and I will supply anything necessary for the hearing.

Thank you for your cooperation.

Very truly yours,

HINCKLEY, ALLEN & SNYDER, LLP

[Signature]
Jorie T. Andrews

/JTA
RECOGNITION AGREEMENT

THIS RECOGNITION AGREEMENT (this "Agreement"), made as of the _____ day of ____________, 2020, by and between the Lee County Port Authority, a political subdivision of the State of Florida, operator of Page Field General Aviation Airport, having an office at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 ("Authority") and Ross Dress For Less, Inc., a Virginia corporation, having an address at 5130 Hacienda Drive, Dublin, California 94568-7579 ("Tenant").

RECAPITALS

A. Authority is lessor under a certain ground lease (the "Major Lease") with Page Field Commons LLC, as successor in interest to FC/W.R.E. Realty Associates I, L.P. ("Landlord"), as lessee, dated as of May 12, 1997, a memorandum of which was recorded in Lee County, Florida, in Official Records Book 3038, Page 3606, as assigned by virtue of that certain Assignment and Assumption of Lease and Memorandum of Lease, dated May 2, 2005, recorded in Official Records Book 4717, Page 3131, of the Public Records of Lee County Florida, as further assigned by virtue of that certain Assignment and Assumption of Ground Lease assigning such Ground Lease dated December 20, 2017 recorded as Instrument No. 2017000269189 or December 27, 2017 in the Official Records of Lee County, Florida, as affected or amended by that certain Memorandum of Lease dated May 12, 1997, Letter Extension Agreement dated November 5, 1997, Joinder and Consent dated November 18, 1997, Letter Agreement dated February 16, 1998, Amendment to Lease dated November 4, 1998, Agreement dated November 23, 1999, Administrative Amendment dated July 3, 2000, Second Amendment to Lease Agreement dated July 8, 2002, Ground Lessor Consent and Estoppel Certificate dated April 24, 2005, Letter Agreement dated February 11, 2011, Agreement dated May 9, 2011 (as such Major Lease is further amended, restated or modified from time to time which demises certain real property located in Lee County, Florida (the "Premises") more particularly described on Exhibit A annexed hereto and made a part hereof.

B. Pursuant to an instrument dated as of ____________, 20__, (the "Sublease"), Landlord leases to Tenant a portion of the Premises consisting of approximately 26,400 square feet, including approximately 120 feet of frontage, which portion is designated as the "Demised Premises" and more particularly described in the Sublease.

NOW, THEREFORE, it is agreed as follows:

1. Authority warrants and represents to Tenant as follows:

   (i) that Lee County, Florida, is the sole fee owner of the Premises,
   (ii) that Lee County has vested Authority with the power to lease the Premises and grant related rights and privileges under Chapter 63-1541 Laws of Florida, Section 332.08(1) Florida Statutes and Lee County Ordinance 90-02, as amended,
   (iii) that the Major Lease is unmodified, except as provided above, and is in full force and effect,
   (iv) that the initial term of the Major Lease expires on May 31, 2032 and there are three (3) twenty (20) year options to further extend the Major Lease, and
   (v) that Landlord is not in default under the Major Lease nor has any event occurred which would, after notice to Landlord and the passage of time, become a default of Landlord under the Major Lease.

2. Authority hereby consents to and accepts the Sublease and agrees that whenever it has an obligation with respect to the Premises, or its consent or approval is required for any action of Landlord under the Major Lease, then, to the extent such obligation, consent or approval relates to the Demised Premises or Tenant's use and occupation thereof, it will perform such obligation and will not unreasonably withhold or unduly delay or condition such consent or approval.

3. Authority shall not, in the exercise of any of the rights arising or which may arise out of the Major Lease or of any other instrument modifying or amending the Major Lease or entered into in
substitution or replacement thereof, (i) disturb or deprive Tenant in, or of, its possession or its rights to possession of the Demised Premises or of any right and/or privilege granted to or inuring to the benefit of Tenant under the Sublease, (ii) increase Tenant’s obligations and/or reduce Landlord’s obligations under the Sublease, (iii) reduce Tenant’s rights under the Master Lease which Tenant is privileged to enjoy by reason of its tenancy and rights under the Sublease, or (v) materially and adversely affect Tenant’s permitted use of the Demised Premises or Tenant’s permitted use of the Common Areas of the Premises.

4. In the event of the termination of the Major Lease by re-entry, notice, conditional limitation, surrender, summary proceeding or other action or proceeding, or otherwise, or, if the Major Lease shall terminate or expire for any reason before any of the dates provided in the Sublease for the termination of the initial or renewal terms of the Sublease and if immediately prior to such surrender, termination or expiration the Sublease shall be in full force and effect, Tenant shall not be made a party in any removal or eviction action or proceeding nor shall Tenant be evicted or removed of its possession or its right of possession be disturbed or in any way interfered with, and the Sublease shall continue in full force and effect as a direct lease from Authority to Tenant for the remainder of the term thereof (including any rights of Tenant to renew or extend the term thereof) and all of Tenant’s rights, benefits and privileges set forth therein shall continue in full force and effect, without the necessity for executing any new lease. In the event of such attornment, Authority shall assume the performance of all the affirmative covenants of Landlord occurring under the Sublease from and after the time Authority becomes the landlord and until such time as such obligations are assumed by a bona fide purchaser, if any.

5. (a) If the Major Lease terminates (i) because Landlord has exercised an option to terminate the Major Lease, (ii) by operation of law, or (iii) by mutual agreement between Authority and Landlord, Tenant may elect in its sole discretion to continue the Sublease in full force and effect notwithstanding such termination of the Major Lease, as provided in this Paragraph 5:

(b) On such election by Tenant, the Sublease shall continue in full force and effect as a direct lease from Authority to Tenant for the remainder of the term thereof (including any rights of Tenant to renew or extend the term thereof) and all of Tenant’s rights and privileges set forth therein shall continue in full force and effect, without the necessity for executing any new lease. In the event of such attornment, Authority shall assume the performance of all the affirmative covenants of Landlord occurring under the Sublease from and after the time Authority becomes the landlord and until such time as such obligations are assumed by a bona fide purchaser, if any.

(c) If Landlord has elected to terminate the Sublease as a result of fire or other casualty or a condemnation in accordance with the terms of the Sublease, and Landlord has concurrently exercised a right to terminate the Major Lease for the same reason, Authority shall so notify Tenant, and Tenant may, within twenty (20) days after receipt of such notice from Authority, give Authority notice of the exercise by Tenant of any right or option granted to Tenant under the Sublease in which event Landlord’s notice of termination of the Sublease shall be void, and the provisions of subparagraph (b) above shall apply.

6. Nothing contained in this Agreement shall be deemed to reduce or abrogate any rights of Tenant to cure any default of Landlord under the Sublease in accordance with and subject to the provisions of the Sublease and/or to deduct from rental such amounts which Tenant may be entitled to so deduct under the provisions of the Sublease.

7. Any dispute between Authority (or any other purchaser) and Landlord as to the existence of a default by Landlord under the provisions of the Master Lease, shall be dealt with and adjusted solely between Authority (or any subsequent purchaser) and Landlord, and Tenant shall not be made a party thereto.

8. Authority hereby covenants that any sale by Authority of the Premises pursuant to the exercise of any rights and remedies under the Master Lease or otherwise, shall be made subject to the Sublease and the rights of Tenant thereunder.

9. In the event the Sublease is terminated as a result of Landlord’s bankruptcy or reorganization, whereby Authority retains or obtains fee title to the Premises (without the encumbrance of the Master Lease), Authority agrees that the Sublease shall remain in effect as between Authority (as landlord) and Tenant, subject to
the terms of this Agreement, and, upon Tenant’s written request, Authority and Tenant agree to execute a reinstatement agreement documenting that the Sublease has been reinstated as between Authority (as landlord) and Tenant and that the terms and conditions thereof shall be as stated in the Sublease, subject to the provisions of this Agreement.

10. Authority hereby waives and relinquishes any and all rights or remedies against Tenant, pursuant to any lien, statutory or otherwise, that it may have against the property, goods or chattels of Tenant in or on the Demised Premises.

11. (a) Any notices, demands, reports or communications required, desired or permitted to be given under this Agreement ("Notices") shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless same shall be given by registered or certified mail, return receipt requested, postage prepaid, or by any recognized overnight mail carrier, with proof of delivery slip, (public or private), (i) if to Authority, at the address of Authority as hereinabove set forth or at such other address as Authority may designate by Notice, or (ii) if to Tenant, then to the attention of Real Estate Legal Notice Department of Tenant, at the address of Tenant as hereinabove set forth, and with a copy sent to: Bartko, Zankel, Bunzel & Miller, One Embarcadero Center, Suite 800, San Francisco, CA 94111, Attn: Ross Notice, or at such other address(es) as Tenant may designate by Notice. During the period of any postal strike or other interference with the mail, personal delivery (with proof of delivery slip or sworn affidavit of service) shall be substituted for registered or certified mail.

(b) Any Notice hereunder shall be deemed to have been given or served for all purposes on the date of delivery or refusal thereof.

(c) Notwithstanding anything herein to the contrary, neither party may designate any address for delivery of Notices unless same shall include a (i) street address, (ii) building name and/or number, (iii) street designation, (iv) city, (v) state, and (vi) zip code.

(d) If Authority delivers a notice to Landlord of Landlord’s default under the Master Lease, Authority shall also concurrently deliver a copy of such notice to Tenant.

12. This Agreement contains the entire understanding of Authority and Tenant regarding the matters dealt with herein (any prior written or oral agreements between them as to such matters being superseded hereby). No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

13. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, assigns and sublessees, including, without limitation, the covenants of Authority herein shall be specifically binding upon any purchaser of the Premises.

14. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, said provision(s) shall be void and of no further force or effect.

15. This Agreement shall be governed and construed according to the laws of the state where the Premises are located.

16. In the event of any litigation arising out of the enforcement or interpretation of any of the provisions of this Agreement, the unsuccessful party shall pay to the prevailing party its reasonable attorneys’ fees, including costs of suit, discovery and appeal. The “prevailing party” shall be that party who obtains substantially the relief sought in the action.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the date first above written.
ATTEST  LINDA DOGGETT:
Clerk of the Circuit Court

By: __________________________

BOARD OF PORT COMMISSIONERS
LEE COUNTY, FLORIDA

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

ROSS DRESS FOR LESS, INC.
a Virginia corporation

By: __________________________
Name:  Gregg McGillis
Its:  Executive Vice President, Property
Development
AUTHORITY ACKNOWLEDGMENT

STATE OF __________________________
COUNTY OF __________________________

On this the ___ day of ___________, 2019, before the undersigned officer, personally appeared __________________________ and __________________________, who acknowledged themselves to be the __________________________ and __________________________ respectively, of __________________________, a __________________________ corporation, and that they as such __________________________ and __________________________, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said corporation by themselves as __________________________ and __________________________.

IN WITNESS WHEREOF, I hereunto set my hand and official seal

______________________________________________
Signature of Notary

______________________________________________
Printed Name of Notary
Notary Public State of __________________________
My Commission Expires __________________________
Commission Number __________________________

(SEAL)
TENANT ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

On __________ before me, ____________________________________________, a Notary Public, personally appeared Gregg McGillis, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she they executed the same in his/her their authorized capacity(ies), and that by his/her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

________________________________________
Notary Public
EXHIBIT A - Legal Description

Leasehold estate created under that certain Lease by and between Lee County Port Authority and FC/WRE Realty Associates I, L.P., a limited partnership, dated May 12, 1997, a Memorandum of which was recorded November 19, 1998, in Official Records Book 3038, Page 3606, as assigned to Inland Western Fort Myers Page Field, L.L.C., a Delaware limited liability company, by Assignment and Assumption of Lease and Memorandum of Lease recorded May 20, 2005, in Official Records Book 4717, Page 3131, all of the public records of Lee County, Florida, as further assigned pursuant to that certain Assignment and Assumption of Ground Lease executed by RPAI Fort Myers Page Field, L.L.C., a Delaware limited liability company (formerly known as Inland Fort Myers), to Page Field Commons LLC, a Delaware limited liability company, dated as of December 20, 2017, and intended to be recorded in public records of Lee County, Florida, demising the following described lands:

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

From the Southwest corner of said Section 1; run North 89°44'31" East along the South line of said Section for 33.01 feet to an intersection with the East line of State Road 45 (US 41) (Tamiami Trail); thence run North 00°06'40" West along said East line for 203.65 feet to the Point of Beginning of the herein described parcel. From said Point of Beginning continue North 00°06'40" West along said East line for 2399.68 feet; thence run North 89°20'39" East for 696.09 feet to a West line of Fowler Street extension; thence run Southerly along said West line along the arc of a curve to the left of radius 1017.93 feet (delta 00° 38'34"") (chord bearing South 12°01'52" East) (chord 11.42 feet) for 11.42 feet to a point of tangency; thence run South 12°21'09" East along said West line of Fowler Street for 1182.45 feet to a point of curvature; thence run Southerly and Southwesterly along the arc of a curve to the right of radius 1082.92 feet (delta 61°48'25"") (chord bearing South 18°33'04" West) (chord 1112.35 feet) for 1168.18 feet to a point of tangency; thence run South 53°48'02" West, for 97.76 feet to a point of curvature; thence run Southwesterly along the arc of curve to the right of radius 1079.92 feet (delta 14°32'14"") (chord bearing South 61°54'07" West) (chord 273.26 feet) for 274.00 feet; thence run South 85°05'58" West for 47.25 feet; thence run Southwesterly along the arc of a curve to the right of radius 1067.92 feet (delta 00°54'28"") (chord bearing South 72°03'46" West) (chord 16.92 feet) for 16.92 feet to a point of tangency; thence run South 72°31'00" West for 158.58 feet; thence run North 45°59'18" West, for 81.29 feet to the Point of Beginning. Bearing herein above mentioned are based on assuming the South line of Section 1, Township 45 South, Range 24 East, bears North 89°44'31" East.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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

From the Southwest corner of said Section 1; run North 89°44'31" East along the South line of said Section for 33.01 feet to the East right-of-way boundary of State 45 (U.S. 41) (Tamiami Trail); thence run North 00°06'40" West, for 203.65 feet to the East right-of-way boundary of State Road 45 (U.S. 41) (Tamiami Trail) and the Point of Beginning; thence coincident with said East right-of-way boundary North 00°06'40" West, a distance of 2399.77 feet; thence departing said East right-of-way boundary, North 89°21'04" East, a distance of 696.07 feet to a point on the Westerly right-of-way boundary of Fowler Street, said point being on a curve with radius of 1017.93 feet, a central angle of 00°38'21"; said curve is subtended by a chord which bears South 11°52'20" East, for a distance of 11.36 feet; thence coincident with said Westerly right-of-way boundary for the following nine (9) courses: (1) run Southerly coincident with the arc of said curve, a distance of 11.36 feet; (2) thence South 12°21'18" East, a distance of 1182.47 feet to a curve with a radius of 1082.92 feet, a central angle of 61°48'48"; said curve is subtended by a chord which bears South 18°33'20" West, for a distance of 1112.47 feet; (3) thence coincident the arc of said curve a distance of 1168.31 feet; (4) thence South 53°43'12" West, a distance of 97.24 feet to a curve with a radius of 1079.92 feet, a central angle of 14°31'57"; said curve is subtended by a chord which bears South 61°51'38" West, for a distance of 273.18 feet; (5) thence coincident with the arc of said curve 273.91 feet; (6) thence South 85°08'28" West, a distance of 47.79 feet to the point of curvature of a curve with a radius of 1067.92 feet, a central angle of 00°54'27"; said curve is subtended by a chord which bears South 72°02'56" West, for a distance of 16.91 feet; (7) thence coincident with the arc of said curve 16.92 feet; (8) thence South 72°31'42" West, a distance of 158.61 feet; (9) thence North 45°59'09" West, a distance of 81.23 feet to the Point of Beginning.
1. REQUESTED MOTION/PURPOSE: Update on the RSW Terminal Expansion Project
2. FUNDING SOURCE: N/A
3. TERM: N/A
4. WHAT ACTION ACCOMPLISHES: Update the ASMC/Board on the progress of the RSW Terminal Expansion design

5. CATEGORY: 18. Administrative Agenda

6. ASMC MEETING DATE: 12/17/2019
7. BoPC MEETING DATE: 1/16/2020

8. AGENDA:

- CEREMONIAL/PUBLIC PRESENTATION
- CONSENT
- **X** ADMINISTRATIVE

9. REQUESTOR OF INFORMATION:
   (ALL REQUESTS)
   NAME  Ben Siegel
   DIV.  Interim Executive Director

10. BACKGROUND:
On May 21, 2019, an update was provided to the ASMC regarding the status and progress of the design effort associated with the Southwest Florida International Airport (RSW) Terminal Expansion Project. This project plans to expand the passenger terminal in order to combine the current three (3) security checkpoints into a single consolidated security checkpoint. The expansion will provide a better passenger experience and shorten security checkpoint wait times, as well as connect Concourses B, C and D to provide increased concession spaces, which will offer passengers more food, beverage and retail options and provide the airport with more revenue.

LCPA executive staff will provide an update on the progress of the project.

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12. SPECIAL MANAGEMENT COMMITTEE RECOMMENDATION:

- APPROVED
- APPROVED as AMENDED
- DENIED
- OTHER

13. PORT AUTHORITY ACTION:

- APPROVED
- APPROVED as AMENDED
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