



**PIPELINE LICENSE AGREEMENT BETWEEN BROWARD COUNTY AND AIRCRAFT  
SERVICE INTERNATIONAL, INC. d/b/a MENZIES AVIATION FOR PIPELINE FACILITIES AT  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

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**PIPELINE LICENSE AGREEMENT BETWEEN BROWARD COUNTY AND AIRCRAFT SERVICE INTERNATIONAL, INC. d/b/a MENZIES AVIATION FOR PIPELINE FACILITIES AT FORT LAUDERDALE–HOLLYWOOD INTERNATIONAL AIRPORT**

This Pipeline License Agreement (“Agreement”) is entered into by and between Broward County, a political subdivision of the State of Florida (“County”), and Aircraft Services International, Inc. d/b/a Menzies Aviation, a Delaware corporation, authorized to transact business in the State of Florida (“Licensee”) (County and Licensee collectively referred to as the “Parties”), and is effective as of the date that it is fully executed by the Parties (“Effective Date”).

**RECITALS**

- A. County owns and operates the Airport (hereinafter defined).
- B. Licensee has maintained a jet fuel operation at the Airport for more than fifty (50) years.
- C. Citgo Petroleum Corporation (“Citgo”) has owned, operated, and maintained a bulk petroleum pipeline at Port Everglades in Broward County, Florida (“Port Everglades”) for more than fifty (50) years.
- D. Citgo owns, operates, and maintains a pipeline and related improvements within property located at Port Everglades pursuant to a license agreement, dated November 7, 2017 (“Port Everglades License Agreement”).
- E. The Board (hereinafter defined) on June 15, 1976 approved a request to permit Licensee and Citgo to connect their facilities with an eight (8) inch pipeline located on Airport property.
- F. The pipeline commonly referred to as the “Beeline Pipeline” runs from Port Everglades (“Port Everglades”) to the Airport transporting Jet Fuel (as hereinafter defined) from Citgo’s terminal located in Port Everglades to the Airport.
- G. Several license agreements permitting the continued operation of the underground aviation fuel pipeline were entered between the County and Licensee with the most recent having a termination date of May 31, 2012.
- H. The Licensee has continued to make license payments and operate and maintain the pipeline in a holdover status.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1. DEFINITIONS

1.1 **Airport.** Fort Lauderdale-Hollywood International Airport located in Broward County, Florida, and all property encompassed within the boundaries of the Fort Lauderdale-Hollywood International Airport.

1.2 **Airport Pipeline.** That portion of the continuous pipeline used for the transportation of Jet Fuel commonly known as the Beeline Pipeline that is located on the Licensed Property.

1.3 **Applicable Laws.** All Environmental Laws and any and all applicable laws, codes, advisory circulars, rules, regulations, ordinances, and resolutions of any governmental or quasi-governmental entity relating to the Airport, the Licensed Property, the Improvements, or activities at the Airport or the Licensed Property, that have been or may hereinafter be adopted, including, but not limited to, all applicable federal, state, County, and local, quasi-governmental agency laws, codes, advisory circulars, rules, regulations, ordinances, resolutions, development orders, and grant agreements.

1.4 **Approved Plans.** Plans and specifications for Improvements to the Licensed Property (as hereinafter defined), including any amendments and changes thereto, that have received the prior written approval of the Aviation Department and all other applicable governmental agencies.

1.5 **Aviation Department or BCAD.** The Broward County Aviation Department or any successor agency.

1.6 **Board.** The Board of County Commissioners of Broward County, Florida.

1.7 **County Administrator.** The administrative head of Broward County appointed by the Board.

1.8 **County Attorney.** The chief legal counsel for County appointed by the Board.

1.9 **Certified Public Accountant ("CPA").** A duly licensed independent firm of certified public accountants.

1.10 **Day(s).** Calendar days, not business days, unless otherwise specified in the Agreement.

1.11 **Director of Aviation.** The Director of Aviation or the Acting Director of Aviation, or such other person or persons as may from time to time be authorized in writing by the Board, the Broward County Administrator, or the Director of Aviation to act for the Director of Aviation with respect to any or all matters pertaining to this Agreement.

1.12 **DMARC.** The design, installation, construction, modification, addition, alteration, repair, maintenance, renovation, replacement, removal, or any work related to the Airport Pipeline, including, but not limited to, the decommissioning and deactivation or commissioning and activation of the Airport Pipeline or other related Improvements.

1.13 **Environmental Assessment.** A document based on one or more environmental site assessments, examinations, inspections, tests, inquiries, and surveys necessary to identify Recognized Environmental Conditions, contamination, pollutants, and the presence of hazardous materials, hazardous substances, or other Materials in, on, or under the surface of the Licensed Property or real property impacted by the condition of the Licensed Property, including Environmental Site Assessments conducted in accordance with American Society for Testing and Materials (“ASTM”) E1527 - 13, ASTM E2247 - 16, or Rule 62-780, Florida Administrative Code.

1.14 **Environmental Laws.** Any and all applicable federal, state, County, and local statutes, ordinances, regulations, codes, rules, laws, permits, licenses, approvals, orders, advisory circulars, resolutions, development orders, grant agreements, legislative mandates, and directives of any federal, state, or local court, governmental, or quasi-governmental entity with jurisdiction of such matter, that have been, or may hereinafter be adopted, including, but not limited to, those relating to the generation, use, handling, storage, transportation, or disposal of hazardous materials or hazardous substances and those relating to surface water management. Such laws include, but are not limited to: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC § 9601, et seq.); the Resources Conservation and Recovery Act of 1976 (42 USC § 6901, et seq.); the National Environmental Policy Act (42 USC § 4321 et seq.); the Clean Water Act (33 USC § 1251 et seq.); the Safe Drinking Water Act (42 USC § 300 et seq.); the Hazardous Materials Transportation Act (49 USC § 5101 et seq.); the Oil Pollution Act (33 USC § 2701); the Toxic Substance Control Act (15 USC § 2601, et seq.); Hazardous Materials Safety Regulations (Title 49 CFR Parts 100 -185); Pipeline Safety Regulations (Title 49 CFR Parts 190 – 199); Chapters 373, 376, and 403, Florida Statutes, and rules adopted thereunder; and Chapter 27 of the Broward County Code of Ordinances.

1.15 **Federal Aviation Administration (“FAA”).** That agency of the United States Government established under 49 USC § 106, or its successor.

1.16 **Improvement(s).** The Airport Pipeline and all other appurtenances and equipment of the Licensee located at the Licensed Property, or hereafter installed or constructed by Licensee or any of the Licensee’s Parties (as hereinafter defined) and all DMARCs thereto.

1.17 **Jet Fuel.** Liquid jet fuel petroleum products.

1.18 **License Year.** The period beginning on the earlier of (a) the first day of the month following the Effective Date, or (b) the Effective Date, if it occurs on the first day of the month, and ending on the last day of the twelfth month thereafter, and each succeeding twelve-month period thereafter.

1.19 **Licensed Property.** The real property depicted and described on **Exhibit A**, subject to rights of way and all other property interests of record.

1.20 **Licensee’s Operations.** All operations, activities, actions, and inactions by Licensee or any of Licensee’s Parties, whether before or after the Effective Date of this Agreement.

1.21 **Licensee's Parties**. The officers, agents, affiliates, partners, contractors, subcontractors, and all their employees, and all invitees of Licensee.

1.22 **Master Plan**. The Fort Lauderdale-Hollywood International Airport Master Plan or update thereto, and all amendments and replacements thereof, as accepted by the FAA.

1.23 **Materials**. Any pollutant, contaminant, petroleum product, hydrocarbon contamination, hazardous substances, hazardous materials, including but not limited to, Jet Fuel or any by-product thereof or other material regulated pursuant to Applicable Laws.

1.24 **PHMSA**. The Pipeline and Hazardous Materials Safety Administration within the United States Department of Transportation or any successor agency.

1.25 **Person**. Any individual, firm, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business enterprise. The reference in this Agreement to any one of the foregoing types of persons is a reference to all other types of persons.

1.26 **Recognized Environmental Conditions**. The presence or likely presence of any Materials, including without limitation, Jet Fuel or any by product thereof, in, on, or at a property: (1) due to release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment and as described in the Standard Practice for Environmental Site Assessments: Phase 1 Environmental Site Assessment Process ASTM E 1527-13.

1.27 **TSA**. The Transportation Security Administration or any successor agency.

1.28 **Term**. The period of time that this Agreement is in effect, subject to earlier termination as provided in this Agreement.

1.29 **USDOT**. The United States Department of Transportation or any successor agency.

## **ARTICLE 2. GRANT OF LICENSE; RESERVATION OF RIGHT TO RELOCATE**

Subject to all of the provisions and conditions of this Agreement, County hereby grants to Licensee the nonexclusive license for the right and privilege to install, maintain, operate, repair, replace, and remove the Improvements that are located at and within the Licensed Property. The privilege provided to Licensee in this Agreement shall not be construed as precluding County from granting like or similar privileges to others. Licensee shall not use the Licensed Property for any purpose other than as specifically allowed by this Agreement.

2.1 The Improvements installed in the Licensed Property that exist as of the Effective Date or that are installed or modified by Licensee following the Effective Date shall only be used for the purpose of serving as a carrier of Jet Fuel products to the Airport. The Improvements now and hereinafter located in the Licensed Property will be installed and maintained below ground.

2.2 **Operation.** Licensee shall operate the Airport Pipeline for the use and benefit of the airlines, shall make available its services on reasonable terms without unjust discrimination, and shall refrain from imposing or levying excessive, discriminatory, or otherwise unreasonable charges or fees for any Airport service.

2.3 **No Rights in Airspace.** Nothing contained in this Agreement grants Licensee any rights whatsoever in the airspace above the Licensed Property. County reserves the right to take any action that it considers necessary to protect the aerial approaches of the Airport against obstruction.

2.4 **Subordination of Agreement.** This Agreement and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which County acquired the Airport from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in those instruments and documents and any existing or subsequent amendments thereto. This Agreement is subject and subordinate to Applicable Laws pertaining to the Airport. This Agreement is subject and subordinate to the provisions of any agreement made at any time between County and the United States Government relative to the operation or maintenance of the Airport, the execution of which was required as a condition precedent to the transfer of federal rights or property to County for Airport purposes or the expenditure of federal funds for the improvement or development of the Airport, including without limitation, the expenditure of federal funds for the development of any of the Airport under the Federal Aviation Act of 1958, as codified in Title 49, United States Code. In addition, this Agreement is subordinate and subject to all resolutions adopted at any time by County in connection with any revenue bonds issued by County with respect to the operations of any of the Airport or any improvements to the Airport or any Airport facilities, and to the provisions of all documents executed in connection with any such bonds, including without limitation, any pledge, transfer, hypothecation, or assignment made at any time by County to secure any of those bonds.

2.5 **No Interference with Airport's Operations or Maintenance.** Licensee expressly agrees for itself and its successors and assigns to prevent any use of the Licensed Property or the Airport Pipeline that would interfere with or adversely affect the operation or maintenance of the Airport or otherwise constitute an Airport hazard.

2.6 **Condition and Use of the Licensed Property.** County makes no representations or warranties whatsoever as to: (a) the condition of the Licensed Property; (b) whether the Licensed Property, or any part thereof, are in compliance with Applicable Laws; (c) whether any Materials exist on or under the Licensed Property or in the Improvements in violation of Applicable Laws; or (d) any permitted or available use of the Licensed Property. County makes no representations or warranties regarding the legality, permissibility, suitability, or availability of any use of the Licensed Property that may be contemplated by Licensee. County makes no representations or warranties concerning habitability or fitness for any particular purpose. Licensee specifically obligates itself to conduct its own due diligence investigation as to the Licensed Property and the suitability thereof for Licensee's purposes. The Licensed Property, and all components thereof,

are leased in **“AS IS CONDITION”** and **“WITH ALL FAULTS.”** Licensee acknowledges that it is leasing the Licensed Property subject to the noises, sounds, and impacts to persons and property that are customarily contained or emanate from an airport. Licensee represents, acknowledges, and agrees that Licensee has had sufficient opportunity to inspect the Licensed Property and all components thereof and hereby accepts the Licensed Property and all components thereof in **“AS IS CONDITION”** and **“WITH ALL FAULTS.”** Licensee hereby assumes all risk of noncompliance of the Licensed Property, or any part thereof, with Applicable Laws. Upon receipt of any notice of noncompliance with any Applicable Laws, Licensee hereby agrees to make all repairs, alterations, and additions to the Licensed Property and to take all corrective measures as may be necessary to bring the Licensed Property into compliance with Applicable Laws. Licensee shall not be entitled to any abatement or adjustment of the License Fee or any other payments based on the condition of the Licensed Property, the failure of any component part(s) to be in working order, the necessity of Licensee to repair or take corrective actions with respect to any part thereof, or the inability to obtain, or any delay in obtaining, any development approvals from any governmental body having jurisdiction, including but not limited to, County.

Licensee hereby releases County from any and all claims, demands, damages, and liabilities whatsoever on account of the condition of the Licensed Property, any failure of any of the component parts to be in working order, the necessity of Licensee to repair or take corrective actions with respect to any part thereof, or the necessity to obtain any development approvals from any governmental body, including, without limitation, County.

In the event of any conflict between these provisions and any other provisions of this Agreement, the provisions of this section shall control. Notwithstanding anything herein to the contrary, this section is not intended to address or apply to the release of any Materials at the Licensed Property. In the event of any such release, the provisions of Article 25 shall apply.

2.7 Federal Aviation Act, Section 308. Nothing contained in this Agreement shall be deemed to grant to Licensee any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as codified in 49 USC § 40103, et seq., for the conduct of any activity on the Airport, except that, subject to the terms and conditions hereof, Licensee shall have the right to use the Licensed Property under this Agreement. The rights granted under this Agreement are nonexclusive, and County reserves the right to grant similar privileges to another licensee or other licensees for other parts of the Airport.

2.8 In addition to the provisions set forth in Section 6.13, County shall have the right to require Licensee to relocate the Improvements when such relocation is determined necessary in County’s sole discretion to accommodate County Activities. “County Activities” shall include, but not be limited to, the development of taxiways, runways, airfield improvements, passenger terminals, drainage facilities, or other Airport facilities and infrastructure that are owned and operated by County, including construction related to any County Activities, or as directed by the FAA. County shall provide Licensee with written notice of the required relocation of the Improvements for County Activities which shall include the time period by which the relocation must be completed. Following notice, the relocation of the Improvements and the deactivation

of the Airport Pipeline shall be at no expense to County, with all costs and expenses to be borne by the Licensee, including, but not limited to, all costs of contamination assessment and remediation and the Licensee shall proceed with the relocation of the Improvements and the deactivation of the Airport Pipeline in accordance with the time period specified in the County's notice. County shall not be liable for any costs associated with or resulting from Licensee's relocation of the Improvements or deactivation of the Airport Pipeline as required herein. The Licensee shall have thirty (30) days from receipt of County's relocation notice in which to elect to terminate this Agreement and surrender the Licensed Property pursuant to Article 19, and thereafter following such election, the Licensee shall proceed in accordance with Article 19. Any such election to terminate this Agreement shall be given by a written notice to the County that is signed by Licensee.

2.9 Should it become necessary to relocate the Improvements for reasons determined by federal, state, County, or local agencies having jurisdiction over the Airport Pipeline or at Licensee's request, all expenses of deactivation and relocation of the Improvements, including costs for associated environmental remediation, will be borne by Licensee. Licensee shall deactivate and relocate the Improvements in the time and pursuant to the procedures required by the federal, state, or local agencies having jurisdiction. Licensee may exercise any administrative, judicial, or appellate rights ("Review Rights") available to it to challenge the determination by a federal, state, or local agency (other than County acting pursuant to Section 2.9 above or Section 6.13 of this Agreement) that Airport Pipeline be relocated; provided, however, that Licensee covenants and agrees to indemnify and save harmless County, its current, past, and future commissioners, officers, agents, and employees, their successors and assigns, individually and collectively, from and against all liability for any expenses, fines, damages, claims, suits, demands, or causes of action of any kind or nature in any way arising out of or resulting from Licensee's exercise of such Review Rights.

### **ARTICLE 3. TERM**

3.1 **Term.** The Term of this Agreement shall commence on the Effective Date and shall end concurrently with the Port Everglades License Agreement on November 6, 2027, unless terminated earlier as provided in this Agreement (the "Termination Date").

3.2 In the event the Port Everglades License Agreement is terminated or expires at any time during the Term of this Agreement, then at any time thereafter, either County, acting through the Director of Aviation, or Licensee shall have the right to terminate this Agreement by written notice. Any such termination of this Agreement shall be effective on the date contained in the written notice of termination and the provisions of Article 19 shall apply.

### **ARTICLE 4. RESERVATION OF TITLE**

No right, title or interest in and to the Licensed Property shall vest in Licensee other than the privilege of using said Licensed Property for the expressed purposes and under the terms and conditions set forth herein. Title to the Licensed Property shall remain in County for such use and occupation as determined in the sole discretion of County.

## ARTICLE 5. LICENSEE FEE

5.1 **License Fee.** Licensee shall pay County for the non-exclusive right to construct, operate, and maintain the Airport Pipeline and related appurtenances the amount of Twenty Six Thousand Seven Hundred Seventy-five and 00/100 Dollars (\$26,775.00) annually ("License Fee") plus applicable sales taxes thereon, subject to adjustment as hereinafter provided.

5.2 The License Fee is due and payable in advance, without billing, set-off, or deduction, commencing on the Effective Date and continuing on the first (1<sup>st</sup>) day of each License Year after the Effective Date. In the event that the Effective Date is other than the first day of the month, the License Fee shall be payable on the first day of the following month and shall include a prorated amount for the number of Days from the Effective Date to the end of that month. Should the first day of any License Year fall on a weekend day or County holiday, the applicable annual License Fee shall be due and payable on the last County business day of the previous month.

5.3 **Annual Increases in License Fee.** On the first (1<sup>st</sup>) day of the second (2<sup>nd</sup>) License Year and on the first day of each License Year thereafter (each such date being referred to as an "Adjustment Date"), County shall adjust the License Fee in accordance with the License Fee adjustment provisions of Section 5.4. The adjusted License Fee, together with applicable sales taxes thereon, will be the new License Fee for that License Year.

5.4 **Percentage License Fee Adjustment.** On each Adjustment Date the License Fee shall be increased to an amount equal to the greater of: (a) the product of the License Fee for the immediately preceding License Year, multiplied by the "CPI Multiplier" (as hereinafter defined); or (b) the product of the License Fee for the immediately preceding License Year, multiplied by 1.03. The greater product of that multiplication will be the amount of the License Fee payable during that License Year. Upon determining the License Fee adjustment, the Aviation Department shall advise Licensee of the new License Fee. In no event will any adjusted License Fee established under this Section 5.4 be less than the total License Fee due during the immediate prior License Year.

- (a) The "CPI Multiplier" is a fraction, the numerator of which is the "CPI Index Number" (as hereinafter defined) indicated for the month that is three (3) months prior to the Adjustment Date and the denominator of which is the CPI Index Number indicated for the month that is fifteen (15) months prior to the Adjustment Date.
- (b) The "CPI Index Number" is the index number of retail commodity prices designated "CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS-UNITED STATES CITY AVERAGE - ALL ITEMS" (1982-1984=100) ("Consumer Price Index") issued by the Bureau of Labor Statistics, United States Department of Labor. The License Fee and the adjustment made based upon the provisions of this section shall be made solely by County. Any publication by either the United States Department of Labor or the United States Department of Commerce in which such CPI Index Numbers are published is admissible evidence in any legal or judicial proceeding involving this Agreement without further proof of authenticity. Should the

Bureau of Labor Statistics cease publishing the above-described index, then such other index as may be published by the United States Department of Labor that most nearly approximates the discontinued index shall be used in making the adjustments described above. Should the United States Department of Labor discontinue publication of an index approximating the index contemplated, then such index as may be published by another United States governmental agency that most nearly approximates the index first above referenced shall govern and be substituted as the index to be used.

**5.5 Notification of New License Fee.** Upon determining a License Fee adjustment pursuant to Section 5.4 above, the Aviation Department shall advise Licensee of the new License Fee for the License Year, accompanied by evidence supporting the manner in which the new adjusted License Fee was determined, in sufficient detail to enable Licensee to verify the calculations.

**5.6 Effective Date of License Fee Adjustment.** If the Licensee has not received notice of the adjusted annual License Fee by the date the annual License Fee payment is due, the previous annual License Fee amount shall be paid by Licensee. Upon receipt of the notice of the adjusted annual License Fee, the adjusted License Fee amount shall be retroactive to the date the License Fee should have been adjusted ("Corrective Date"). The amount that is the difference between the total License Fee paid by Licensee from the Corrective Date and the total amount of License Fee due for such period shall be due and payable to County within thirty (30) Days following the Aviation Department's notice of the new adjusted License Fee amount. If Licensee disputes the amount of any adjustment of License Fee payments, Licensee shall pay the License Fee to County when due in the amount required before the License Fee adjustment until such time as the dispute has been settled, at which time an adjustment, with interest thereon, will be made retroactive to the beginning of the adjustment period in which the dispute arose.

**5.7 Licenses, Fees and Taxes.** Licensee shall timely pay all federal, state, County, and local taxes and fees, and all special assessments of any kind, that are now or may hereafter be levied upon the Licensed Property (including all Improvements), and its use as granted by this Agreement, the business conducted on the Licensed Property, any of Licensee's property used in connection therewith, and upon any License Fees or other sums payable hereunder, including, but not limited to, any valorem taxes attributable to the Licensed Property, sales or excise taxes of any kind, and personal property taxes levied against Licensee's tangible and intangible personal property. Licensee shall maintain in full force and effect all federal, state, county and local licenses, local business taxes, and permits required for Licensee's business operation.

**5.8 Utilities.** Licensee shall timely pay all utilities fees or charges that are now or hereafter charged or assessed with respect to operations at the Licensed Property.

**5.9 Additional License Fees and Charges.** If County is required or elects to pay any sum or incur any obligation or expense by reason of the failure, neglect, or refusal of Licensee to perform or fulfill any of the conditions, covenants, or requirements contained in this Agreement, or as a result of any act or omission of Licensee, or if Licensee fails to pay any obligation arising under this Agreement, Licensee shall pay to County the sum paid on behalf of Licensee by County or the expense incurred by County, including all costs, damages, penalties, and interest at the rate

of eighteen percent (18%) per annum from the date paid by County or due from Licensee until the date paid by Licensee ("Additional Payment Obligation"). The Additional Payment Obligation will become an additional License Fee, subject to all applicable taxes, and recoverable by County in the same manner and with like remedies as if it were originally a part of the License Fee due and owing pursuant to this Agreement. Licensee shall pay the Additional Payment Obligation within fifteen (15) Days after County's written demand.

**5.10 Late Payments - Interest.** County shall be entitled to collect interest at the rate of eighteen percent (18%) per annum from the date due until the date paid for any amounts payable under this Agreement. The right of County to require payment of interest and the obligation of Licensee to pay interest to County shall be in addition to, and not in lieu of, the right of County to enforce any other remedy provided in this Agreement or under applicable law.

**5.11 Dishonored Check or Draft.** In the event Licensee delivers a dishonored check or draft to County in payment of any obligation arising under this Agreement, Licensee shall incur and pay a service charge in the then-prevailing amount established by County. In such event, the Aviation Department may require that future payments be made by cashier's check or other means acceptable to the Aviation Department, and the security deposit required herein may be increased, in the Aviation Department's sole discretion.

**5.12 Place of Payments.** All payments required to be made by Licensee under this Agreement shall be made payable to "Broward County" and be provided to the Finance Division, Broward County Aviation Department, 320 Terminal Drive, Suite 200, Fort Lauderdale, Florida 33315, or to such other office or address as the Aviation Department may designate.

**5.13** In addition to the Letter of Credit required in Article 7, within forty-eight (48) hours after approval of this Agreement by the Board, Licensee shall provide County with a letter of credit as security for Licensee's obligations required in this Agreement (the "Security Deposit Letter of Credit," which term shall be deemed to include each replacement thereof). The Security Deposit Letter of Credit shall (a) be irrevocable, (b) be issued by a federally or state chartered bank (the "Issuer") acceptable to County, (c) be in an initial amount equal to one third (1/3) of the annual License Fee hereunder, plus the amount of the sales tax charge applicable thereto, and shall thereafter be maintained with an undrawn balance in an amount not less than the amount required in this section, (d) have an expiration date no earlier than the last day of the current License Year, and (e) be in a form acceptable to County. The Security Deposit Letter of Credit shall provide that it may be drawn against, in whole or in part, in accordance with the procedures of this Article 5 by presentation to the Issuer of a sight draft, with no other requirements as a condition of drawing on the Security Deposit Letter of Credit. One hundred and twenty (120) Days prior to the expiration date of the Security Deposit Letter of Credit, Licensee shall provide County with reasonable evidence that Licensee has renewed the Security Deposit Letter of Credit for a period of no less than one (1) year from its then current expiration date in the amount required herein. The amount of change in the face amount of the Security Deposit Letter of Credit will be as indicated in this Article 5. The Security Deposit Letter of Credit shall be deemed a parent guarantee.

(a) The Security Deposit Letter of Credit shall be increased by Licensee to reflect any increases in License Fee within fourteen (14) Days following any License Fee adjustment, and such increased Security Deposit Letter of Credit shall be provided by Licensee to the Aviation Department within fourteen (14) Days following any License Fee adjustment. In addition the Aviation Department, upon fourteen (14) Days written notice to Licensee, may require an increase in the amount of the Security Deposit Letter of Credit up to an additional amount equal to five (5) additional months' License Fee installments due to increased obligations hereunder, or if upon a review of Licensee's payment or performance history at the Airport, the Aviation Department determines an increase is required. The increased Security Deposit Letter of Credit shall be provided to the Aviation Department within fourteen (14) Days following a written notice to Licensee from the Aviation Department of a requirement to increase the Security Deposit Letter of Credit.

(b) The Security Deposit Letter of Credit must provide coverage from the Effective Date of this Agreement and must be kept in full force and effect throughout the Term of this Agreement and for a period of six (6) months thereafter. Any termination of the Security Deposit Letter of Credit without the written consent of the Aviation Department before the end of the aforesaid six (6) month period following the Termination Date shall be a default of this Agreement. A failure to renew a Security Deposit Letter of Credit, or to increase or replace the amount of the Security Deposit Letter of Credit, if required, shall entitle County to draw down the full amount of such Security Deposit Letter of Credit.

(c) The County shall not draw on the Security Deposit Letter of Credit without first giving Licensee written notice of its intent to draw sums under the Security Deposit Letter of Credit together with an explanation of the amount sought to be drawn and the basis for such draw with reasonable supporting documentation. County may draw on the Security Deposit Letter of Credit (i) in the event that Licensee has failed to perform one or more of its obligations described in subsection (d) below, (ii) upon the occurrence of a bankruptcy petition involving Licensee, or (iii) upon cancellation or nonrenewal of the Security Deposit Letter of Credit as required by this Article 5. If any deficiencies in performance claimed by County in the notice are not cured within thirty (30) Days after such notice to County's reasonable satisfaction, the draw on the Security Deposit Letter of Credit may be immediately submitted by County. Upon the occurrence of a bankruptcy event involving Licensee, or upon cancellation or nonrenewal of the Security Deposit Letter of Credit as required in this Article 5, the draw on the Security Deposit Letter of Credit may be immediately submitted by County. Licensee hereby irrevocably directs the then Issuer of the Security Deposit Letter of Credit to honor any such draw immediately upon submission thereof by County. In the event that County draws on the Security Deposit Line of Credit as authorized in this Article 5, Licensee shall replenish the funds drawn by County within three (3) Days.

(d) The Parties acknowledge and agree that the Security Deposit Letter of Credit shall be security for the performance of the obligations set forth below:

- (i) Payment of all monies due to County; and
- (ii) Performance of all of Licensee's obligations to County.

5.14 In the alternative, Licensee may deliver to County, in lieu of the Security Deposit Letter of Credit, a security deposit in cash. Any cash security deposit shall be in the amount and subject to all the requirements of Article 5. In the event that County draws down on the cash deposit as authorized in this Article 5, Licensee shall replenish the funds drawn by County within three (3) Days. The security deposit shall not be returned to Licensee until six (6) months after the expiration or earlier termination of this Agreement and all obligations of this Agreement are performed and satisfied. County shall not pay interest on the security deposit.

5.15 The provisions of this Article 5 shall survive the expiration or any other termination of this Agreement.

#### **ARTICLE 6. PIPELINE DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE AND RESERVATION OF RIGHT TO USE SURFACE**

6.1 If Licensee constructs any new Airport Pipeline or replaces any or all of the existing Airport Pipeline, County may require Licensee to do the following:

- (a) Install the Airport Pipeline to a minimum depth of four (4) feet of cover, which is in excess of that required by the current federal regulations; or
- (b) Protect the Airport Pipeline with a sand/cement grout mix.

6.2 Improvements shall be designed, constructed, tested, operated, and maintained in accordance with Applicable Laws, including without limitation, USDOT pipeline safety regulations set forth in 49 CFR Parts 194, 195, and 199. Licensee shall maintain all existing Improvements in a good state of repair and at the design depths required by Applicable Laws. All existing and new Improvements installed by Licensee shall be designed, constructed, tested, operated, and maintained in full compliance with Applicable Laws.

6.3 Licensee shall submit its proposed DMARC to the Aviation Department's project review committee ("PRC") as a tenant improvement project ("TIP") for Aviation Department review and approval prior to commencing any work at the Licensed Property. Licensee's written proposal shall describe the DMARC to be performed and its location. No DMARC may occur at the Licensed Property until Licensee has obtained prior written TIP approval by the PRC. Thereafter, any DMARC for any Improvements shall be completed in accordance with all Applicable Laws. Before starting any DMARC, Licensee shall submit to the Aviation Department for its written authorization, a site plan and complete plans and specifications of the contemplated DMARC and shall record or cause to be recorded in the Official Records of Broward County, Florida, a notice of commencement in compliance with the requirements of Chapter 713, Florida Statutes. The plans and specifications shall be certified by an architect or engineer licensed to practice in Florida and shall consist of the following: (a) working drawings; (b) technical specifications;

(c) bid documents, if applicable; (d) schedule for accomplishing Improvements; (e) schedule of finishes and graphics; (f) list of furnishings, fixtures and equipment; (g) certified estimate of the design, development, and construction costs; and (h) such other information as may be required by the Aviation Department. If DMARC is made without Aviation Department approval, upon notice in writing, Licensee shall remove same or, at the sole option of the Aviation Department, cause same to be changed to the Aviation Department's satisfaction. If Licensee fails to comply with the notice, the Aviation Department may affect the removal or change, and Licensee shall pay the cost thereof to County within fifteen (15) Days after County's written demand.

6.4 In addition to the Aviation Department's approval, Licensee shall obtain all required approvals from other agencies having jurisdiction over the DMARC, including but not limited to, departments, divisions, or offices of the County, local governments, the State of Florida, and the federal government. Licensee shall provide any and all documentation and information necessary in order to obtain approval from the FAA. No work shall be performed on the Licensed Property except pursuant to Approved Plans. All construction, Improvements, signs, equipment, and landscaping shall be made in accordance with the requirements of the Aviation Department. All of the plans and specifications shall be in sufficient detail to reasonably permit the Aviation Department to determine whether the Improvements will be consistent with this Agreement and the standards of the Aviation Department. No material changes shall be made to any Approved Plans without the Aviation Department's prior written approval, which shall not be unreasonably withheld or delayed. Any change that requires the issuance of a permit or modifies an existing permit is a material change.

6.5 All plans and specifications, including, without limitation, "as-built" plans provided under Section 6.17 below, shall identify the purpose of utilities and any conduits by generic reference only (e.g., "phone conduit," "telecommunications conduit," or "power conduit"), and shall not identify any utility or conduit ducts for cable, telecommunications, electric service, and the like, by any specific company name.

6.6 During any DMARC undertaken by Licensee, Licensee shall pay all costs associated with any removal, replacement, relocation, and protection of all utilities and navigational aids, including but not limited to, water, wastewater disposal, sewer, telephone, electric, airfield lighting system, conduit ducts for cable, telecommunications, and electric service, and navigational aids, whether such are located at the Licensed Property or on adjacent property. All underground conduits installed at the Licensed Property, including without limitation cable, electric, and telecommunications, are Improvements. Licensee shall install all such conduits at Licensee's expense and shall ensure the conduits are free of all liens, claims, and encumbrances, including any claims of any utility provider. Licensee shall not, or attempt to, grant, agree to, or sign any easements with any utility provider with respect to the Licensed Property or any other portion of the Airport property.

6.7 The Aviation Department shall have the right to require that all DMARC on the Licensed Property or any development within the Airport be consistent with the overall Airport system architecture and the Master Plan, as well as reasonable standards of safety, quality and

**Applicable Laws.** The Aviation Department's approval of any plans, specifications, or designs is not a representation or warranty as to such compliance, and the responsibility for compliance shall at all times remain with Licensee. The Aviation Department may refuse to grant consent to a DMARC, if, in its sole opinion, the proposed facilities as shown on the plans and specifications will not satisfy the provisions of this Agreement, comply with Applicable Laws, or for any other reason whatsoever, in its sole discretion.

**6.8** If Licensee requires temporary use of the surface area of a given location at the Licensed Property, Licensee shall include a notice of the intent to temporarily use the surface area ("Notice of Intent") in its PRC submittal for the Aviation Department's review and approval. The Notice of Intent shall include the proposed temporary use location. Any temporary use approved by the Aviation Department may be shortened or cancelled by the Aviation Department in its sole discretion.

**6.9** Licensee and Licensee's contractors shall conduct all DMARC activities in a careful and prudent manner, utilizing safety practices normally followed by prudent operators under similar circumstances. Licensee shall not interfere with the operation, use and occupancy of any property located at the Airport, including without limitation, any tenant-occupied property. Licensee will ensure that air and vehicle traffic shall be continuously maintained and that Airport operations shall not be interrupted. Licensee shall not interfere with any future development of the Airport or any portion of the Airport. County shall have the right to object and require the stoppage of work relating to anything that adversely affects the Airport or the Airport's tenants, patrons and users. Licensee shall bear the cost of removal and replacement of any materials or objects stored or placed by Licensee or its contractors at the Licensed Property or at any other authorized Airport location and shall repair any damage and restore the Licensed Property or any other authorized property located at the Airport used by Licensee to its original condition.

**6.10** Should any pavement, or other improvement on the Licensed Property or other County property be damaged, removed, displaced, or should any pavement or other improvement deteriorate as a result of any DMARC or Licensee's regular operation, Licensee shall at Licensee's sole expense, replace or repair such pavement or other improvement and restore the same to its former condition to the satisfaction of the Aviation Department. If Licensee fails to repair any damage or injury to the Licensed Property as required herein, then the Aviation Department may, at its option, and in addition to all other remedies that may be available, repair or cause to be repaired any such damage or injury and Licensee shall pay the cost thereof within fifteen (15) Days after written demand by County.

**6.11** Licensee shall not create any obstruction or conditions, which are or may become dangerous to the public. All brush, trimmings and other growth cut by Licensee and all earth and other material removed by Licensee not required to be used in replacing the excavation shall be removed and disposed of by Licensee at its own cost and expense and at no cost or expense whatsoever to County.

6.12 The Airport Pipeline shall be installed and maintained underground. County expressly reserves the right to continue to use or to allow third parties to use the aboveground surface of the Licensed Property.

6.13 County shall have the right, at any time during the Term of this Agreement, to cross the Licensed Property and install, develop, or redevelop utilities, cables, roads, parking areas, pavements, railroad tracks, or any other improvement and Licensee shall take such steps as are necessary in order to protect the Airport Pipeline. County shall provide Licensee with ten (10) Days prior written notice (except under emergency circumstances, as determined in the Aviation Department's sole discretion) of the commencement of any work authorized by County on the Licensed Property, subject to Section 6.14 below.

6.14 If any County work will require changes, relocation, or removal of the Improvements, a notice in writing shall be given by County to Licensee, one hundred and twenty (120) Days prior to the commencement of the County's work. Any required changes, relocation, or removal of the Improvements, as deemed necessary in the Aviation Department's sole discretion, shall be made by Licensee in conformity with the time established and all requirements contained in the notice. If relocation of any Improvements is necessary as determined in the Aviation Department's sole discretion, Licensee shall comply with the relocation and deactivation requirements in Section 2.9 herein.

6.15 In the event that County engages in any construction in the vicinity of the Airline Pipeline, Licensee shall mark the area of the Airport Pipeline with stakes or markings in order to protect the integrity of the Airport Pipeline within forty-eight (48) hours of receipt of written notice from BCAD.

6.16 Licensee, at its sole cost and expense, shall repair any damage or injury to the Licensed Property caused by its exercise of the privileges granted in this Agreement, including all buildings, structures, and other improvements, promptly restoring the Licensed Property to the same or substantially similar condition existing immediately prior to such damage as determined by the Aviation Department. If Licensee fails to repair any damage or injury to the Licensed Property as required herein, then the Aviation Department may, at its option, and in addition to all other remedies that may be available, repair or cause to be repaired any such damage or injury and Licensee shall pay the cost thereof within fifteen (15) Days after written demand by County.

6.17 Licensee shall report the issuance of final approval pursuant to Applicable Laws of the Improvement to the Aviation Department and forward a copy of final approval issued for any Improvements within ten (10) Days after the issuance of same. Additionally, within ninety (90) Days after the issuance of final approvals for any Improvements, and also at such other times as requested by the Aviation Department, Licensee, at its sole expense, shall provide the Aviation Department with a complete set of "as-built" plans and specifications in a format that meets the Aviation Department's electronic media submittal standards. If based on the nature of the Improvement a Certificate of Occupancy ("CO") was not required, Lessee shall submit to the Aviation Department evidence that all applicable permits have been closed.

**ARTICLE 7. CONSTRUCTION CONTRACTS, BONDS, INDEMNIFICATION, AND INSURANCE REQUIREMENTS FOR CONTRACTORS**

7.1 In addition to the Security Deposit Letter of Credit required in Article 5, Licensee shall provide County with a Letter of Credit as security for the construction activities in any County approved DMARC (the "Letter of Credit," which term shall be deemed to include each replacement thereof). The Letter of Credit shall (a) be irrevocable, (b) be issued by a federally or state chartered bank (the "Issuer") acceptable to County, (c) in the amount of one hundred percent (100%) of the total cost of the construction contracts for any DMARC, upon, under or above the Licensed Property, and be maintained with an undrawn balance of at least the amount required in this section, and (d) be in a form reasonably acceptable to County. The Letter of Credit shall provide that it may be drawn against, in whole or in part, in accordance with the procedures of this Article 7 by presentation to the Issuer of a sight draft, with no other requirements as a condition of drawing on the Letter of Credit. On or before one hundred twenty (120) Days prior to the expiration date of the Letter of Credit, Licensee shall provide County with reasonable evidence that Licensee has renewed the Letter of Credit for a period of no less than one (1) year from its then current expiration date in the amount indicated below. The Letter of Credit shall be deemed a parent guarantee.

(a) The Letter of Credit must provide coverage from the approval of the TIP by the Aviation Department and must be kept in full force until the Aviation Department provides a written consent to release the Letter of Credit. Any termination of the Letter of Credit without the Aviation Department's written consent to release Letter of Credit shall be a default of this Agreement. Licensee's failure to timely renew the Letter of Credit shall entitle County to draw down the full amount of such Letter of Credit.

(b) Unless otherwise expressly stated herein, County shall not draw on the Letter of Credit without first giving Licensee written notice of its intent to draw sums under the Letter of Credit together with an explanation of the amount sought to be drawn and the basis for such draw with reasonable supporting documentation. County may draw on the Letter of Credit (i) in the event that Licensee has failed to perform any of its obligations described in subsection (d), (ii) upon the occurrence of a bankruptcy event involving Licensee, or (iii) upon cancellation or nonrenewal of the Letter of Credit as required by this Article 7. If any deficiencies in performance claimed by County in the notice are not cured with thirty (30) Days after such notice to County's reasonable satisfaction, the draw on the Letter of Credit may be immediately submitted by County. Notwithstanding the foregoing, upon the occurrence of a bankruptcy petition involving Licensee, or upon cancellation or nonrenewal of the Letter of Credit as required in this Section 7.1, the draw on the Letter of Credit may be immediately submitted by County. Licensee hereby irrevocably directs the then Issuer of the Letter of Credit to honor any draw pursuant to this section immediately upon submission thereof by County.

(c) The Letter of Credit must provide coverage from the date of the County approved DMARC and must be kept in full force and effect until the Aviation Department provides

a written consent to release the Letter of Credit following satisfactory completion of the construction.

(d) The Parties acknowledge and agree that the Letter of Credit shall be security for the performance of all construction obligations.

7.2 In the alternative, Licensee may deliver to County, in lieu of the Letter of Credit, a security deposit in cash. Any cash security deposit shall be in the amount and subject to all the requirements of Article 7. In the event that County draws down on the cash deposit as authorized in this Article 7, Licensee shall replenish the funds drawn by County within three (3) Days. The security deposit shall not be returned to Licensee until Licensee has performed all of its obligations as set forth in this Article 7. County shall not pay interest on the security deposit.

7.3 Liens, Claims, and Encumbrances. Licensee shall not do, nor permit to be done, anything that shall result in the imposition of any liens, claims, or encumbrances on the Licensed Property, or portion thereof, or the Improvements. If any lien or notice of lien shall be filed against the Licensed Property, or portion thereof, or the Improvements, Licensee shall cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction within thirty (30) Days after notice of the filing thereof. Licensee shall not be deemed to be County's agent so as to confer upon any contractor or subcontractor providing labor or materials to the Licensed Property or Improvements a mechanic's lien upon County's estate under the provisions of Chapter 713, Florida Statutes. County's interest in this Agreement shall not be subordinate to any claim, lien, or encumbrance affecting Licensee's interests in this Agreement.

7.4 Payment and Performance Bonds. Within fifteen (15) Days prior to commencement of any DMARC located on the Licensed Property or at the Airport, Licensee, or its general contractor hired to perform the DMARC, shall furnish Performance and Payment Bonds as financial security in the forms attached hereto as Exhibits H and I respectively, and Broward County shall be named as a dual obligee on the Performance and Payment Bonds.

(a) Each Bond shall be in the amount of one hundred percent (100%) of the cost of the DMARC and guarantee the completion and performance of the DMARC, as well as full payment of all suppliers, laborers, and subcontractors performing the DMARC. Each Bond shall be with a surety company that is qualified pursuant to the terms set forth in this section.

(b) Alternate Form of Security. Licensee may furnish County an alternate form of security, which may be in the form of cash, money order, certified check, cashier's check, or unconditional letter of credit, in the amount equal one hundred percent (100%) of the cost of the DMARC located on the Licensed Premises or at the Airport, in lieu of providing Performance and Payment Bonds. Such alternate form of security shall be subject to the approval of County, and include all the same conditions as set forth in subsection (a) above.

(c) County will only accept Payment and Performance Bonds from a surety company that (i) has twice the minimum surplus and capital required by the Florida Insurance Code at the time of the DMARC, (ii) is otherwise in compliance with the provisions of the Florida Insurance Code, and (iii) holds a currently valid certificate of authority issued by the United States Department of the Treasury under Sections 9304 to 9308 of Title 31 of the United States Code. Licensee shall provide a certificate and affidavit in a form provided by County certifying to the satisfaction of the requirements provided in this subsection (c).

**7.5 Construction Contract Provisions.** Licensee shall include substantially the following provision in all contracts it enters into with any contractors in connection with any DMARC:

“Contractor shall indemnify and hold harmless County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys’ fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of contractor or other persons employed or utilized by contractor in the performance of this Agreement. These provisions shall survive the expiration or any other termination of this Agreement. To the extent considered necessary by Licensee and County, any sums due Contractor under this Agreement may be retained by Licensee until all of Licensee and County’s claims for indemnification under this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by Licensee.”

**7.6 Insurance Requirements for Construction Contracts.**

(a) Licensee shall, at all times during the Term of this Agreement (unless otherwise provided), require that all contractors and subcontractors working on the Licensed Property or for Licensee in relation to the Licensed Property obtain and maintain insurance coverages for the work and project. Unless otherwise agreed to in writing by County and Licensee, said coverages shall include, but not be limited to, general liability, automobile, workers’ compensation, builder’s risk, and environmental/pollution. Said insurance coverages shall be in accordance with the terms and conditions required by this section. Such policy or policies shall be issued by companies authorized to do business in the State of Florida that have a registered agent in Broward County, Florida upon whom service of process may be made.

(b) Licensee shall include insurance requirements in compliance with this section in all agreements it enters into with contractors and subcontractors performing work at the Licensed Property, and Licensee shall provide County (prior to commencement of any Improvements and no later than the pre-construction meeting held by the Aviation Department with Licensee) with certificates of insurance evidencing the contractor’s compliance with the requirements of this section.

(c) Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be afforded on a form no more restrictive than the latest edition of the respective Insurance Services

Office policy. Contractor shall specifically protect County by naming Broward County as an additional insured/loss payee under the primary and non-contributory General Liability Policy, Business Automobile Liability, Excess Liability, Builder's Risk, and any Property or Environmental Insurance policies. The official title of the certificate holder is Broward County. This official title shall be used in all insurance documentation. Contractor's certificate of insurance shall be in a form that is satisfactory to County's Risk Manager or Risk Management Division.

(d) Coverage is not to cease and is to remain in force until all performance required of contractor is completed. All policies must be endorsed to provide County with at least thirty (30) Days' notice of cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished to County at least thirty (30) Days prior to the date of their expiration. Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after the termination of this Agreement.

(e) Not less than ten (10) Days prior to commencement of any construction or repairs to any Improvements at the Licensed Property, Licensee shall provide to County certificates of insurance evidencing the insurance coverage as specified above. The required certificates of insurance shall not only name the types of coverage provided, but also shall refer specifically to this Agreement with the type of insurance that is being furnished, and shall state that such insurance is as required by this Agreement. If the initial insurance expires prior to the completion of the Improvements, renewal certificates of insurance shall be furnished at least thirty (30) Days prior to the date of expiration. Insurance shall not be canceled, modified, or restricted, without at least thirty (30) Days prior written notice to County, and must be endorsed to provide same. The aforesaid insurance may be reviewed from time to time by County and may be adjusted if County determines that an adjustment would better protect County's interest. If County notifies Licensee, in writing at any time, that the insurance represented in a policy or certificate delivered to County does not conform to the provisions hereof for any other reason, Licensee shall cure such defect within fifteen (15) Days after notice.

7.7 Provision of Documents. Licensee shall provide the Aviation Department with certificates of insurance, policies of insurance, and any other documentation required by this Article 7.

## **ARTICLE 8. OBLIGATIONS OF LICENSEE**

8.1 Observation of Rules and Regulations. Licensee shall abide by all rules, regulations, and policies as may from time to time be adopted and imposed by County with respect to Licensee's use and operation at the Licensed Property, including without limitation all rules, regulations, and policies relating to the DMARC of any Improvements. Licensee shall require all Licensee's Parties entering upon or using the Licensed Property to observe reasonable and nondiscriminatory rules and standards of conduct and shall ensure the use of the Licensed Property is in compliance with the terms of this Agreement. All Licensee's rules and standards of conduct must comply with Applicable Laws and this Agreement. Licensee shall take all lawful

action to enforce compliance with this Agreement and the rules and standards of conduct by Licensee's Parties. Licensee and Licensee's Parties shall observe and obey, and shall require their employees, invitees, suppliers, contractors, and subcontractors to observe and obey, Applicable Laws and the rules and regulations of the Aviation Department and County. Licensee's and Licensee's Parties' obligation to require the observance and obedience of their employees, invitees, suppliers, contractors, and subcontractors applies only while those persons are on or in occupancy of any portion of the Licensed Property.

8.2 Upon written request from the Aviation Department, Licensee shall furnish County with all correspondence, complaints, compliance, and non-compliance documents ("Agency Documents") regarding the Improvements on the Licensed Property or related to the Beeline Pipeline received by Licensee from any government agencies. The requirement to provide Agency Documents shall include, but not be limited to, Agency Documents from the USDOT Office of Pipeline Safety, PHMSA regarding planned and completed on-site safety inspection of the Improvements and review of Licensee's practices and procedures including copies of final inspection reports, letters of concern, warning letters and violation notices. Further, Licensee shall provide County with copies of discharge notification reports, if any, filed with USDOT, PHMSA and the Florida Department of Environmental Protection, as applicable.

8.3 On the first (1<sup>st</sup>) day of each License Year, Licensee shall provide to County, at Licensee's sole cost and expense, a certified statement certifying that Licensee and/or Licensee's Parties maintain the Improvements in accordance with USDOT regulations 49 CFR Part 195, ASME/ANSI B31.4, Applicable Laws, and industry standards.

8.3.1 In the event Licensee or Licensee Parties fails, or is unable, to provide the above required certified statement, Licensee shall cure, at its sole cost, all compliance and safety issues within thirty (30) Days following the Aviation Department's written notice. If Licensee commences the cure within thirty (30) days following the receipt of written notice from the Aviation Department, and such failure is curable but cannot be cured through the use of commercially reasonable efforts within thirty (30) days from the receipt of written notice from the Aviation Department, Licensee shall be allowed such additional time as is reasonably determined by the Aviation Department to be necessary to cure such failure through the use of commercially reasonable efforts.

8.4 No Interference with Utilities. Licensee and Licensee's Parties shall not do, or permit to be done, anything that may interfere with the effectiveness or accessibility of the utilities systems installed or located on or about the Licensed Property that are also used by other entities at the Airport. Licensee shall forthwith repair, at Licensee's sole cost and expense, any utilities that are damaged as a result of Licensee's or Licensee's Parties' activities.

8.5 Emergency Evacuation and Hurricane Plans. Within thirty (30) Days following the Effective Date, Licensee shall provide the Aviation Department with emergency evacuation and hurricane plans consistent with County's evacuation and hurricane plans for the Airport. These plans must contain detailed procedures of actions to be taken by Licensee if an evacuation is needed or if a hurricane alert is present, and the plans must include emergency contact

information. Before June 1 of each year, Licensee shall submit updated emergency evacuation and hurricane plans to the Aviation Department.

**8.6 Safety Management System ("SMS").** In accordance with the Aviation Department's rules, regulations, and policies, or regulations promulgated by the FAA, Licensee and Licensee's Parties shall report to the Aviation Department all safety incidents that occur as a result of any action, inaction, or operations of Licensee or Licensee's Parties on the Licensed Property or anywhere on Airport property. Licensee and Licensee's Parties shall cooperate with the Aviation Department with respect to any subsequent investigations of an incident. If a Safety Management System ("SMS") program is established at the Airport, Licensee shall comply, and shall require all of Licensee's Parties to comply, with that program immediately upon notification and receipt of the same from County. Incidents shall be reported within 24 hours of the incident occurrence via the SMS Reporting System by using the website address [www.fll.net/airport/safety](http://www.fll.net/airport/safety) or by e-mail to [flfsafety@broward.org](mailto:flfsafety@broward.org).

#### **ARTICLE 9. INGRESS AND EGRESS**

**9.1 Ingress and Egress to Licensed Property.** Licensee and Licensee's Parties will have ingress and egress to the Licensed Property by public ways used in common with other tenants and users of the Airport. County may, from time to time, substitute other suitable means of ingress and egress. The determination of suitability shall be in County's sole discretion.

**9.2 Temporary or Permanent Closure.** County may close, consent to, or request the closure of, any roadway, taxiway or other area at the Airport presently or hereafter used; provided, a suitable means of ingress and egress is made available to the Licensed Property. The determination of suitability of any alternate ingress and egress shall be in County's sole discretion. Any such closure may be temporary or permanent. Licensee hereby releases, waives, and discharges County, its successors and assigns, of and from any and all claims, demands, or causes of action that Licensee may now or at any time hereafter have against County, its successors and assigns, arising or alleged to arise out of the closing of any street, roadway, taxiway, or other area used as such, whether within or outside the Airport, provided that County makes available to the Licensed Property suitable means of ingress and egress.

#### **ARTICLE 10. COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS**

**10.1 Compliance with Applicable Laws.** Licensee and Licensee's Parties shall comply with Applicable Laws that now or at any time during the Term apply to the Licensed Property or any operations at the Licensed Property.

**10.2 Assurance of Proper Safeguards.** Licensee and Licensee's Parties shall comply with governmental requirements to ensure proper safeguards for the protection of persons and property on the Licensed Property and at the Airport.

## ARTICLE 11. MAINTENANCE AND REPAIR

11.1 Responsibility for Maintenance and Repair. Licensee shall, at all times, assume the entire responsibility, and shall relieve County from all responsibility, for all repair and maintenance whatsoever of the Improvements located on the Licensed Property whether the repair or maintenance is ordinary or extraordinary.

11.2 Right to Entry, Inspection, and Testing. Licensee and Licensee's Parties shall permit entry, inspection, and testing, at all reasonable times, by inspectors of any federal, state, or County agency having jurisdiction under any law, rule, regulation, or order, applicable to the Licensed Property or the operations at the Licensed Property. This right of entry, inspection, and testing does not impose a duty on County to take any action and will not impart liability on County should it not take any action. County, by its officers, employees, agents, representatives, and contractors may, at all reasonable times, enter the Licensed Property to inspect the Licensed Property, to observe Licensee's performance of its obligations under this Agreement, and to do any act or thing that County must or may do under this Agreement or otherwise. Additionally, representatives of County, including without limitation Aviation Department representatives, may in their sole discretion, enter the Licensed Property at reasonable times to inspect same to determine if Licensee is maintaining the Licensed Property as required by this Agreement. If Licensee fails in any material respect to maintain the Licensed Property as required under this Agreement or as may be requested by the Aviation Department, and after written notice from the Aviation Department continues to fail to do so; or fails in any material respect to diligently continue to completion the maintenance, repair, replacement, or rebuilding of the Licensed Property as required pursuant to this Agreement, then the Aviation Department may, at its option, and in addition to all other remedies that may be available, maintain, repair, replace, or rebuild, any part of the Licensed Property, and Licensee shall pay the cost thereof within fifteen (15) Days after written demand by County.

## ARTICLE 12. INSURANCE REQUIREMENTS

12.1 Licensee shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, the insurance coverages set forth in **Exhibit G**, in accordance with the terms and conditions required by this article. If services are required of Licensee pursuant to this Agreement subsequent to the expiration of the Agreement, Licensee shall provide, pay for, and maintain in force such insurance coverages until County determines all services required of Licensee have been completed. Such policy or policies shall be issued by companies authorized to do business in the State of Florida with a minimum AM Best financial rating of A-, and that maintain a registered agent in Broward County, Florida upon whom service of process may be made.

12.2 Licensee shall specifically protect County by naming Broward County as an additional insured/loss payee under the primary and non-contributory General Liability Policy, Business Automobile Liability, Excess Liability, and any Property or Environmental Insurance policies. All retentions, deductibles, and exclusions must be declared in writing and approved in writing by County. Licensee shall be solely responsible to pay all deductibles or retentions. If Licensee

maintains broader coverage or higher limits than the minimums shown in **Exhibit G**, County requires, and shall be entitled to, the broader coverage or the higher limits maintained by Licensee.

12.3 Licensee shall provide written notice to County of any cancellation or restriction of insurance at least thirty (30) Days prior to the date of expiration, or ten (10) Days prior to the date of expiration for cancellation due to non-payment, and shall concurrently provide County with a copy of its updated Certificates of Insurance. Upon request by County, Licensee shall provide a copy of any policy required by this article within fourteen (14) Days of a written request to Licensee, either by inspection of the policy at Broward County Aviation Department or by providing a copy of the policy. Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after the termination or expiration of this Agreement. Commercial General Liability Insurance shall be written on an "occurrence" basis only.

12.4 County may modify the insurance coverages required under this article at any time as County determines necessary to protect County's interest. In such event, County shall notify Licensee of the modified requirements, and Licensee shall provide an updated Certificate of Insurance evidencing such modified coverages within thirty (30) Days after County's notice of the modification to the requirements.

12.5 Subrogation. Notwithstanding anything to the contrary in this Agreement, Licensee waives any right of recovery against County for any loss or damage to the extent the same is required to be covered by Licensee's insurance hereunder. Licensee shall obtain from its insurers a waiver of subrogation in favor of County in connection with any loss or damage covered by Licensee's insurance.

12.6 Certificate Holder Address. The certificate holder address shall read "Broward County, c/o Aviation Department, 320 Terminal Drive, Suite 200, Fort Lauderdale, Florida 33315" or such other address as may from time to time be required by County.

12.7 Contractor and/or Subcontractor Coverage. Any contractor and/or subcontractor performing work for Licensee shall have Broward County listed as a certificate holder for all coverages and as an additional insured for its General Liability, Excess Liability, and Pollution coverages. Licensee shall require its subcontractors to provide all appropriate and necessary insurance coverages in their respective agreements.

12.8 The failure of County to demand evidence of the required insurance or to identify any deficiency in Licensee's coverage based on the evidence of insurance provided shall not be construed as a waiver by County. The insurance requirements required under this Agreement are minimum requirements, and shall in no way limit Licensee's liability arising out of the work performed, related activities, or use permitted under this Agreement.

12.9 Underground Tanks: Licensee at all times during the Term of this Agreement, shall be responsible for obtaining and maintaining third party liability corrective action and cleanup costs in the coverages set forth on **Exhibit G** or any higher limits that may be statutorily required.

Licensee shall be obligated to ensure that Broward County is covered as an additional insured on all underground tank insurance policies ("UST Policies") required by this Agreement. Notwithstanding any language that may be contained within the UST Policies, Licensee shall do all that is necessary to ensure County is covered under the UST Policies, without any exceptions or exclusions that may exclude or avoid liability.

Licensee shall submit to the Aviation Department and County Risk Management evidence that Licensee has submitted this Agreement and any corollary, ancillary or subagreements (the "Contracts") to the applicable insurance company, to ensure that all Contracts are scheduled and covered by the UST Policies and designated as covered contracts under the UST Policies.

In the event coverage under the UST Policies is not continued or is terminated, Licensee shall at its own cost, purchase the extended optional reporting period coverage available under the Policies. Licensee shall provide evidence satisfactory to County of the purchase of such Coverage. Licensee shall be responsible for the greater of the amount set forth in **Exhibit G**, or any higher limits that may be statutorily required, for any liability claims arising from or related to the underground storage tanks on the Licensed Property for an equivalent amount of time for which the extended optional reporting period coverage was available for purchase under the Policies.

12.10 The provisions of this Article 12 shall survive the expiration or earlier termination of this Agreement.

### **ARTICLE 13. DAMAGE TO OR DESTRUCTION OF LICENSED PROPERTY**

13.1 **Removal of Debris.** If the Licensed Property, or any part thereof, is damaged by fire, the elements, or other casualty, Licensee shall promptly remove all debris resulting from such damage and shall promptly take all necessary action and repairs to protect the safety of persons entering the Licensed Property. To the extent that such measures are covered by Licensee's insurance, all proceeds thereof shall be used by Licensee for such purpose. If Licensee fails to promptly comply with the provisions hereof, County may take any measures it deems necessary to render the Licensed Property in a safe condition, and Licensee shall be fully responsible for any of County's expenses. Licensee shall pay all expenses incurred by County within ten (10) Days of written demand from County. If there are insurance proceeds covering such measures, the proceeds shall be paid to County.

### **ARTICLE 14. INDEMNITY**

Licensee shall at all times hereafter indemnify, hold harmless, and defend County and all of County's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Licensee, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. In the event any Claim is brought against an Indemnified

Party, Licensee shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Aviation Department and the County Attorney, any sums due Licensee under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

#### **ARTICLE 15. RIGHTS OF COUNTY RESERVED**

**15.1 Utility, Mechanical, and Other Systems.** County, may, or cause or permit others to, construct, maintain, repair, alter, replace, install, and rebuild, over, in, or under the Licensed Property, existing and future utility, mechanical, electrical and other systems and parts thereof, and enter the Licensed Property at all reasonable times for any such purposes, as may, in County's opinion, be deemed necessary or advisable. County, in the exercise of rights hereunder, will not unreasonably interfere with Licensee's actual use and occupancy of the Licensed Property.

**15.2 Licensee Must Not Obstruct County's Access.** If any personal property of Licensee obstructs the access of County, its officers, employees, agents, or contractors to any existing or future utility, mechanical, electrical, and other systems or any part thereof, Licensee shall move such property, as directed by County, in order to provide access to the utility, mechanical, electrical, or other systems or parts thereof. If Licensee fails to remove the property after direction from County to do so, County may remove such property and Licensee shall pay all expenses incurred by County within ten (10) Days of written demand from County.

**15.3 Right of Flight.** County reserves for the use and benefit of the public, at any and all times, a right of flight for the passage of aircraft in the airspace above the Licensed Property, together with the right to cause in such airspace such noise and other intrusions as may be inherent in the operations of aircraft, now known or hereafter used, for navigation of or flight in that airspace, and for use of said airspace for landing on, taking off from, and operating at the Airport.

**15.4 Maintenance of Utility Easements.** County reserves the right to maintain any utility easements on the Licensed Property as County may now or in the future determine, in its sole discretion, are necessary to serve the needs of the Airport.

**15.5 Police and Regulatory Powers.** Nothing herein contained shall limit County's ability to exercise its police and regulatory powers or its powers of eminent domain.

#### **ARTICLE 16. ASSIGNMENT**

Neither this Agreement nor any interest herein shall be assigned, transferred or encumbered without the prior written consent of County. Any such action shall not relieve Licensee of their obligations hereunder.

## ARTICLE 17. DEFAULT, TERMINATION

17.1 Events of Default. The occurrence of any one or more of the following events is a default under this Agreement:

- (a) By or pursuant to or under authority of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency, or officer having jurisdiction, a receiver, trustee, or liquidator takes possession or control of all or substantially all of the property of Licensee or Improvements, and such possession or control continues in effect for a period of thirty (30) Days; or
- (b) Licensee voluntarily abandons, deserts, or vacates the Licensed Property or discontinues its operation at the Airport for a period of thirty (30) Days; or
- (c) Any lien, claim, or other encumbrance filed against the Licensed Property is not removed or is not adequately secured by bond within thirty (30) Days after Licensee has received notice thereof; or
- (d) Licensee fails to pay any Licensee Fee when due to County and continues such failure for a period of ten (10) Days after written notice from County that such payments are past due; or
- (e) Licensee fails to make any other monetary obligation or payment required hereunder when due, and Licensee continues such failure for a period of ten (10) Days after written notice to cure nonpayment; or
- (f) Licensee fails to obtain the prior written consent of County prior to any assignment or other encumbrance of the Licensed Property or this Agreement; or
- (g) Any activity is conducted, service is performed, or product is transported on the Licensed Property that is not specifically authorized by this Agreement, and such activity does not cease within ten (10) Days after written notice thereof; or
- (h) Licensee fails to keep, perform, and observe each and every other nonmonetary promise, covenant, and provision set forth in this Agreement on its part to be kept, performed, or observed, and continues such failure for a period of thirty (30) Days after receipt of notice of default thereunder, or in the case of the default in any obligation that cannot be cured with due diligence and good faith within thirty (30) Days, if Licensee fails to proceed promptly and with due diligence to cure the default within thirty (30) Days after notice, or having begun to cure the default in a timely manner fails to diligently prosecute the cure to completion; or
- (i) Licensee fails to maintain or renew a required letter of credit or security deposit; or

(j) Suspension for a period of three (3) or more consecutive months or revocation of Licensee's right to operate by a governmental unit or agency having jurisdiction over the Licensed Property and/or the business as being conducted thereon; or

(k) If Licensee or an officer, director, executive, partner, member, shareholder, employee, or agent who is active in the management of Licensee, or any of Licensee's Parties, is found guilty or convicted of illegal conduct or activity (with or without an adjudication of guilt) as a result of a jury verdict, nonjury trial, entry of a plea of guilty or nolo contendere, where the illegal conduct or activity (i) is considered to be a Public Entity Crime as defined by Chapter 287, Florida Statutes; or (ii) is customarily considered to be a "white collar crime" or theft-related crime such as fraud, smuggling, bribery, embezzlement, or misappropriation of funds; or (iii) involves an act of moral turpitude meaning conduct or acts that tend to degrade the principals or owners in society or bring them into public hatred, contempt, scorn, or ridicule, or that tends to shock, insult, or offend the community, ridicule public morals or decency, or harm the image of County by virtue of its association with Licensee; or (iv) results in a felony conviction. Notwithstanding the foregoing, Licensee may abate this event by submitting evidence satisfactory to County in its sole discretion that Licensee has implemented best business practices seeking to prevent and address such illegal conduct or activity from reoccurring, and required the offending person(s) to resign or has otherwise removed the person from Licensee's management activities related to this Agreement; or

(l) Any subsequent breach or default following notice of Habitual Default as described in Section 17.3; or

(m) A material inaccuracy of any representation or warranty made or given by Licensee in this Agreement; or

(n) Licensee fails to comply with its environmental responsibilities as required in Article 25.

**17.2 Result of Default.** If any one or more events of default set forth in Section 17.1 occur, or at any time thereafter during the continuance of such event, County may, at its sole option, exercise one or more of the following rights:

(a) Terminate the rights of Licensee hereunder by giving thirty (30) Days written notice thereof, which termination shall be effective upon the date specified in such notice, in which event the Term and all rights of Licensee hereunder shall expire and terminate on such date and County shall be released and relieved of all liability under this Agreement;

(b) Sue Licensee for all damages, costs, and expenses arising from Licensee committing an event of default, and to recover all such damages, costs, and expenses, including reasonable attorneys' fees at both trial and appellate levels;

- (c) Restrain, by injunction, the commission or attempted commission of an event of default and to obtain a decree specifically compelling performance of any such term or provision of this Agreement. Licensee acknowledges that County would not have an adequate remedy at law for an event of default and that injunctive relief or specific performance are required to protect the public from irreparable harm;
- (d) Draw down on a required letter of credit or security deposit; and/or
- (e) Exercise any and all other remedies available to County under this Agreement or at law or in equity.

In the event of any termination by County, County may accelerate and declare immediately due and payable all unpaid amounts due and other sums required to be paid under this Agreement (excluding amounts not yet payable prior to the termination). In addition, Licensee shall be liable for all damages incurred by County in connection with Licensee's default or the termination of this Agreement upon such a default, including without limitation, all direct damages, such as collection costs and reasonable attorneys' fees, as well as indirect, consequential, and all other damages whatsoever. The exercise by County of any right of termination shall be without prejudice to any other such rights and remedies. No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy provided in this Agreement or otherwise available, and each and every remedy shall be cumulative.

Upon any termination pursuant to this Article 17, Licensee shall have no right to any reimbursements from County.

**17.3 Habitual Default.** Notwithstanding the foregoing, if Licensee has, in the sole discretion of the Aviation Department, frequently, regularly, or repetitively defaulted in the performance of, or breached any of, or been in noncompliance with, any of the terms and conditions required herein to be kept and performed by Licensee, and regardless of whether Licensee has cured each individual condition of breach or default, Licensee may be determined by the Aviation Department to be a "habitual violator." At the time such determination is made, the Aviation Department shall issue to Licensee a written notice advising of such determination and citing the circumstances. The notice shall also advise that there shall be no further notice or cure periods to correct any subsequent breaches or defaults and that any subsequent breaches or defaults of whatever nature, taken with all previous breaches and defaults, shall be considered cumulatively and, collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may terminate this Agreement upon the giving of written notice of termination to Licensee. Such termination shall be effective upon delivery of the notice to Licensee.

**17.4 County's Acceptance of Payment Is Not a Waiver.** County's acceptance of License Fees, charges, or other payments, in whole or in part, for any period or periods after a default of any of the terms, covenants, and conditions hereof to be performed, kept, or observed by Licensee

does not waive County's right to terminate this Agreement or to exercise any other available remedies.

17.5 **Obligations upon Termination; Survival.** Upon the expiration or early termination of this Agreement, Licensee shall immediately cease all operations on the Licensed Property and shall vacate and peacefully surrender the Licensed Property to County in accordance with the terms and conditions set forth in Article 19. The expiration or early termination of this Agreement does not release Licensee from any liabilities or obligations hereunder that have accrued on or before the Termination Date, and all such liabilities and obligations shall survive the expiration or any other termination of this Agreement.

#### **ARTICLE 18. REMEDIES TO BE NONEXCLUSIVE**

Unless otherwise expressly stated herein, no remedy herein conferred upon or reserved to County or Licensee is intended to be exclusive of any other remedy herein provided or otherwise available, and each shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Unless otherwise expressly stated herein, all rights and remedies of the Parties hereunder or at law or in equity are cumulative, and the exercise of any right or remedy does not exclude or waive the right to the exercise of any other.

#### **ARTICLE 19. SURRENDER**

19.1 Upon the expiration or early termination of this Agreement, Licensee, at its expense and at the option of the Aviation Department, shall either:

19.1.1 Remove the Improvements that are the subject of this Agreement; or

19.1.2 Deactivate and abandon the Improvements and segments thereof, in accordance with specifications approved in writing by the Aviation Department and in accordance with Applicable Laws.

19.2 Licensee shall yield and deliver peaceably and promptly to County the possession of the Licensed Property as required in Section 19.1 above. All removal or deactivation of the Improvements on the Licensed Property shall be completed before surrender.

It is agreed and understood that any holding over by Licensee after the expiration or earlier termination of the Term hereof shall not renew and extend same, and Licensee's occupancy shall be construed as a holdover; Licensee agrees to pay to County the License Fee and all other charges required to be paid hereunder during any such holdover period. County, at its option, may impose a double monthly Licensee Fee amount during any holdover period. Licensee shall be liable to County for all loss or damage on account of any such holding after the expiration or earlier termination of the Term, whether such loss or damage may be contemplated at the execution of this Agreement or not. It is expressly agreed that acceptance of the License Fee and any other payments by County in the event that Licensee fails or refuses to surrender possession

shall not operate or give Licensee any right to remain in possession nor shall it constitute a waiver by County of its right to immediate possession or constitute an extension or renewal of the Term.

19.3 **County Not Obligated to Accept Surrender.** In the event Licensee fails to surrender the Licensed Property in the condition required by this Agreement or has failed to complete any of the obligations due under this Agreement, County shall not be obligated to accept Licensee's surrender of the Licensed Property until same have been satisfied and Licensee shall be considered to be holding over and subject to the provisions of Section 19.2. During the period of time from the Termination Date of this Agreement and until County is satisfied, in its sole discretion, with Licensee's surrender of the Licensed Property, Licensee shall be considered a holdover Licensee.

19.4 **Final Walkthrough.** Prior to County's acceptance of surrender, a final exit inspection shall be conducted by Licensee and the Aviation Department to determine compliance with this article and the Aviation Department's acceptance of the condition of the Licensed Property. The Aviation Department's acceptance of the condition of the Licensed Property and satisfaction of the surrender thereof shall be reduced to writing by the Aviation Department. In the event Licensee fails to comply with the terms of this Article 19, County reserves the right to perform all necessary work to bring the Licensed Property to its original condition prior to Licensee's occupancy, normal wear and tear excepted, and Licensee shall reimburse County for all expenses incurred within fifteen (15) Days of written demand from County.

19.5 **Acceptance of Surrender of Licensed Property.** No agreement of surrender or an acceptance of surrender of the Licensed Property is valid unless and until it has been reduced to writing and signed by Aviation Department's and Licensee's duly authorized representatives.

19.6 The provisions of this Article 19 shall survive the expiration or termination of this Agreement.

## **ARTICLE 20. LIMITATION OF PRIVILEGES GRANTED**

Licensee will have no greater privilege to use the Airport or any part thereof, other than the privileges expressly and specifically granted in this Agreement.

## **ARTICLE 21. NOTICES**

21.1 **Notices.** In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Article.

FOR COUNTY:  
County Administrator  
Governmental Center  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Email: bhenry@broward.org

with copies to:  
Director of Aviation  
Aviation Department  
320 Terminal Drive, Suite 200  
Fort Lauderdale, Florida 33315  
Email: mgale@broward.org

FOR LICENSEE:  
Randy Davies  
SVP US Fuels Consortium  
4900 Diplomacy Road  
Fort Worth, Texas 76155  
Email: randall.davies@menziesaviation.com

## ARTICLE 22. UTILITIES

22.1 Licensee Pays for Utilities. Licensee shall pay for all electric, water, garbage, and or other utilities charges, if any, resulting from Licensee's use of Licensed Property when due. Licensee shall install the metering devices for such utilities at Licensee's sole cost. The metering devices will become the property of County upon installation. Extension of utility mains or services to meet Licensee's needs on the Licensed Property shall be at Licensee's sole expense, and will also become County's property upon installation. Licensee shall not commingle or share metered utilities at the Licensed Property or beyond the Licensed Property boundary. Each Improvement shall have a dedicated meter for the appropriate utility.

22.2 Failure, Delay, Interruption in Service. A failure, delay or interruption in the supply of any utility services for any reason whatsoever (whether or not a separate charge is made for same) shall not be construed to be an eviction of Licensee, grounds for any diminution or abatement of the License Fee, or grounds for any claim by Licensee under this Agreement for damages, including any consequential damages.

## ARTICLE 23. ABATEMENT

If, at any time, Licensee becomes entitled to an abatement of License Fees by this Agreement or otherwise, County shall abate the License Fees on an equitable basis taking into consideration the amount and character of the space, the reasonable use of which is denied Licensee as

compared with the entire Licensed Property, and the period of time for which such reasonable use is denied to Licensee.

#### **ARTICLE 24. AIRPORT SECURITY**

**24.1 Airport Security Program and Aviation Regulations.** Licensee shall observe all security requirements and other requirements of the FAA regulations applicable to Licensee, including but not limited to, all regulations of the USDOT, FAA, and the TSA. Licensee shall comply with County's Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and any amendments thereto, and with such other rules and regulations as may be reasonably prescribed by County, including any regulations pertaining to emergency response training, and shall take such steps as may be necessary or directed by County to ensure that Licensee's Parties observe these requirements. Licensee shall be responsible for the care and maintenance of the Airport security barriers and devices as a permanent improvement to the Licensed Property. All costs associated with the construction and repair of the security fence, barriers, access control and monitoring system, including, but not limited to, gates, signs, or locks (keying and re-keying), which are installed now or in the future at the Licensed Property, shall be borne by Licensee. If required by the Aviation Department, Licensee shall conduct background checks of its employees in accordance with applicable federal regulations. If, as a result of the acts or omissions of Licensee or Licensee's Parties, County incurs any fines and/or penalties imposed by any governmental agency, including without limitation, the USDOT, the FAA, or the TSA, or any expense in enforcing any federal regulations, including without limitation, airport security regulations, or the rules or regulations of County, and/or any expense in enforcing County's Airport Security Program, then Licensee agrees to pay and/or reimburse to County all such costs and expenses, including all costs of administrative proceedings, court costs, and attorneys' fees and all costs incurred by County in enforcing this provision. Licensee's payment shall be due within fifteen (15) Days of written demand by County. Licensee shall rectify, to the satisfaction of the applicable enforcement agency, any security deficiency or other deficiency as may be determined as such by County or the USDOT, FAA, the TSA, or any other federal agency with jurisdiction. In the event Licensee fails to remedy any such deficiency, County may do so at the sole cost and expense of Licensee. Licensee shall pay County's costs within fifteen (15) Days of written demand by County. County reserves the right to take whatever action it deems necessary, in its sole discretion, to rectify any security deficiency or other deficiency at Licensee's sole cost and expense.

**24.2 Access to Security Identification Display Areas and Identification Media.** Licensee shall be responsible for requesting the Aviation Department to issue airport issued identification media ("Airport Issued Identification Media") to all employees, including those who are authorized access to Security Identification Display Areas ("SIDA") on the Airport, as designated in the Airport Security Program. In addition, Licensee shall be responsible for the immediate reporting of all lost or stolen Airport Issued Identification Media and the immediate return of the Airport Issued Identification Media for any Licensee's personnel transferred from the Airport or terminated from the employ of Licensee, and upon termination of this Agreement. Before an Airport Issued Identification Media is issued to an employee, Licensee shall comply with the

requirements of applicable federal regulations with regard to fingerprinting for criminal history record checks and security threat assessments, and shall require that each employee complete security training programs conducted by the Aviation Department. Licensee shall pay or cause to be paid to the Aviation Department such charges as may be established from time to time for lost or stolen Airport Issued Identification Media and those not returned to the Aviation Department in accordance with these provisions. The Aviation Department shall have the right to require Licensee to conduct background investigations and to furnish certain data on its employees before the issuance of Airport Issued Identification Media, which data may include the fingerprinting of employee applicants for such media.

**24.3 Operation of Vehicles on the AOA.** Before Licensee shall permit any employee of Licensee or of any subconsultant/subcontractor to operate a motor vehicle of any kind or type on the AOA, Licensee shall ensure that all such vehicle operators possess current, valid, and appropriate Florida driver's licenses. In addition, any motor vehicles and equipment of Licensee or of any subconsultant/subcontractor operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department (unless escorted by an Aviation Department approved escort), which identification must be displayed as required by the Aviation Department.

**24.4 Consent to Search/Inspection.** Licensee's vehicles, cargo, goods and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. Licensee and its subconsultant/subcontractors shall not authorize any employee or other person to enter the AOA unless and until such employee or other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. The foregoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts and other unlawful activities at the Airport. For this reason, persons not executing such consent-to-search/inspection form shall not be employed by Licensee or by any subconsultant/subcontractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by Licensee or by any subconsultant/subcontractor.

**24.5** If any of Licensee's employees, or the employees of any of its subconsultants/subcontractors are required in the course of the work to be performed under this Agreement to access or otherwise be in contact with Sensitive Security Information ("SSI") as defined and construed under federal law, Licensee shall require such individual to execute a SSI Non-Disclosure Agreement promulgated by the Aviation Department before that individual may have access to or contact with SSI.

**24.6** The provisions of Article 24 shall survive the expiration or any other termination of this Agreement.

## **ARTICLE 25. ENVIRONMENTAL COMPLIANCE AND ENVIRONMENTAL CONTAINMENT AND REMOVAL**

**25.1 Environmental Assessment.** An initial Environmental Assessment of the Licensed

Property (“Initial Environmental Assessment”) was performed before the Effective Date. The Initial Environmental Assessment and its conclusions has been received and reviewed by the Parties and are acceptable. The Initial Environmental Assessment is referenced in **Exhibit C** to this Agreement. A complete copy of **Exhibit C** is on file with the Aviation Department and has been provided to Licensee.

**25.2 Environmental Responsibilities.** Licensee shall at all times be responsible for any Recognized Environmental Condition and any release, discharge, or disposal of any Material at the Licensed Property or upon any other Airport property occupied, utilized or accessed by Licensee in any manner whatsoever, that was caused by Licensee or any of Licensee’s Parties, or caused by any trespasser on the Licensed Property at any time that Licensee was in possession of the Licensed Property. Licensee shall, at Licensee’s sole expense, and upon County’s demand or demand of any local, state, or federal regulatory agency, immediately contain, remove, abate, and remediate any Recognized Environmental Conditions and Materials released, discharged, or disposed of on the Licensed Property by Licensee, Licensee’s Parties or Licensee’s actions or upon any other Airport property occupied, utilized or accessed by Licensee or Licensee’s Parties, in any manner whatsoever. If Licensee does not take action immediately to have such Recognized Environmental Conditions and Materials contained, removed, abated, and remediated County or any of its agencies may, upon reasonable notice to Licensee (which notice must be written unless an emergency condition exists, as determined by County, at its sole discretion), undertake the containment, removal, abatement, or remediation of the Recognized Environmental Conditions and Materials at Licensee’s sole cost and expense; however, any such action by County or any of its agencies will not release Licensee from its obligations under this or any other provision of this Agreement or as imposed by law. Licensee shall pay all costs incurred by County within fifteen (15) Days of written demand by County. No action taken by either Licensee or County to contain, remove, abate, or remediate Recognized Environmental Conditions, or a release, discharge, or disposal, whether such action is taken voluntarily or not, is an admission of liability as to the source of, or the person who caused, the Recognized Environmental Conditions or a release, discharge, or disposal. Licensee shall contain, remove, abate, and remediate any impacted property as aforesaid, in accordance with timetables acceptable to County and within Applicable Laws.

**25.3 No Release from Other Liability.** Any Environmental Assessment obtained by either County or Licensee does not in any way release any Party from any liability under Applicable Laws or in any way limit the regulatory powers of County or any of its agencies.

**25.4 Completion of Environmental Documents.** Licensee shall complete the form attached hereto as **Exhibit D** with respect to matters pertaining to the Licensed Property and shall deliver same to County contemporaneously with its execution of this Agreement. At any time as may be requested by the Aviation Department, Licensee shall provide an accurate and complete update of the Licensed Property as to the matters set forth in **Exhibit D**. Licensee shall provide the Aviation Department, if requested at any time, with a list of all hazardous, bio-hazardous, or other Materials stored, used, handled, generated, released, discharged, or disposed of on or transported to or from the Licensed Property.

**25.5 Compliance.** Licensee shall comply with Applicable Laws and the requirements of any Development Order covering the Airport issued to County under Chapter 380, Florida Statutes, including, without limitation, those addressing the following:

(a) Proper protection, use, storage, treatment, and disposal of Materials, including contracting with a licensed hazardous waste transporter and/or treatment and disposal facility to assure proper transport and disposal of hazardous waste and other regulated Materials.

(b) Proper protection, use, disposal, and treatment of storm water runoff, including the construction and installation of adequate pre-treatment devices or mechanisms on the Licensed Property, if applicable. Licensee shall have in place, and make available to the Aviation Department for review, all required environmental permits, licenses, approvals, and documents including, but not limited to site specific Storm Water Pollution Prevention Plan, and a Spill Prevention and Countermeasures Plan.

(c) Adequate inspection, licensing, insurance, and registration of existing or future storage tanks, storage systems, and ancillary facilities to meet all County, local, state, and federal standards, including the installation and operation of adequate monitoring devices and release detection systems.

(d) Adequate facilities on the Licensed Property for management and, as necessary, pretreatment of industrial waste, industrial wastewater, and regulated Materials and the proper storage, handling, use, and disposal thereof.

(e) Compliance with reporting and notification requirements of Title III of the Superfund Amendment, Chapters 373, 376, 403 of the Florida Statutes and rules promulgated thereunder, and Chapter 27 of the Broward County Code of Ordinances, as applicable and as such laws may be amended from time to time.

**25.6 Release or Discharge of Materials.** Licensee is responsible for the release or discharge of any Materials and the associated impacts to the environment from such a release of Materials, which release was directly or indirectly caused by: (a) Licensee or any of Licensee's Parties that occurs at the Licensed Property or occurs upon any other Airport property whether before or after the Effective Date; or (b) any trespasser on the Licensed Property at any time during the Term or at any time Licensee is in possession and control of the Licensed Property, whether before or after the Effective Date, that is in an amount that violates any federal, state, County, or local law, rule, or regulation or violates an order or directive of any federal, state, or local court or governmental authority. At Licensee's sole expense, and upon demand of County or any of its agencies or any local, state, or federal regulatory agency, Licensee shall immediately contain, remove, abate, and remediate any release or discharge Materials and associated impacts to the environment to meet the requirements of Applicable Laws to the Aviation Department's and County's satisfaction.

**25.7 Environmental Assessment and Remediation.** County may require Licensee to actively perform and complete an environmental assessment and remediation that may be required as the result of any release or discharge of Materials as referenced above. Such activities will be performed at Licensee's sole expense, despite the acceptance of any site into any government funded cleanup program that might not require immediate assessment or remediation based on a site ranking or scoring within that program. If County requires environmental assessment or remediation of any such site, then upon County's demand and at Licensee's sole expense, Licensee shall immediately contain, remove, abate, and remediate the site to the Aviation Department's and County's satisfaction. Licensee shall assess and remediate any impacted property in accordance with timetables acceptable to County and within Applicable Laws so as to achieve a timely remediation of the site that does not impede any County development or other County plans.

**25.8 Containment, Removal, or Abatement of Remaining Materials.** If Licensee does not immediately contain, remove, and abate any release or discharge of Materials and the associated impacts to the environment, as required by this Article 25, County or any of its agencies may, upon reasonable notice to Licensee (which notice will be written unless an emergency condition exists), undertake the containment, removal, or abatement of the Materials and all other appropriate actions at Licensee's sole cost and expense and Licensee shall pay all costs incurred by County within fifteen (15) Days of written demand by County. However, any such actions by County or any of its agencies shall not release Licensee from its obligations under this or any other provision of this Agreement or as imposed by Applicable Laws. Any action taken by either Licensee or County to contain, remove, or abate a release or discharge of Materials, whether such action is taken voluntarily or not, is not an admission of liability as to the source of, or the person who caused the pollution or its release. Licensee shall assess or remediate any impacted property in accordance with timetables acceptable to County and within Applicable Laws.

**25.9 Reports or Notices of Releases or Discharges.** Licensee shall provide the Aviation Department with reporting or notice of releases or discharges of Materials occurring at any area used by Licensee, Licensee's Parties, or occasioned due to Licensee's operations at the Airport, which notices will be provided in accordance with the requirements of the Aviation Department's policies and procedures and Applicable Laws. Licensee shall maintain a log of all such reports and notices and shall also maintain all records required by all Applicable Laws and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with all Applicable Laws. Upon request by the Aviation Department, Licensee shall make all documentation required by this Section 25.9 available for review by County's representatives.

**25.10 Reports or Notice of Spills, Leaks, or Discharges.** As required by Applicable Laws, Licensee shall provide the federal, state, County and local regulatory agencies with reports or notice of spills, releases, leaks or discharges (collectively, "release") of Materials on the Licensed Property or on Airport property that exceed an amount required to be reported to any local, County, state, or federal regulatory agency under all Applicable Laws, which reports or notice will be in accordance with all Applicable Laws. Licensee shall further provide the Aviation Department and

the County Environmental Protection and Growth Management Department (or successor agency) with written notice within one (1) Day following commencement of same, of the containment, removal, or abatement measures, remediation efforts or monitoring activities to be effected on the Licensed Property. Licensee shall have an updated contingency plan in effect relating to releases that provides minimum standards and procedures for storage of regulated Materials and other Materials, prevention and containment of releases, and transfer and disposal of regulated Materials and other Materials. The contingency plan will describe design features, response actions and procedures to be followed in case of releases or other accidents involving hazardous substances, hazardous materials, bio-hazardous materials, petroleum products or other Materials. Licensee shall permit entry at all reasonable times of inspectors of County's Environmental Protection and Growth Management Department (or successor agency) and of other regulatory authorities with jurisdiction.

**25.11 Right to Inspect Documents Relating to Environmental Conditions.** The Aviation Department, upon written notice to Licensee, may inspect all documents relating to the environmental condition of the Licensed Property, including without limitation, the release of any Materials or any Recognized Environmental Conditions on the Licensed Property, or any curative, remediation, or monitoring efforts. The Aviation Department shall also have the right, upon written notice to Licensee, to inspect any documents Licensee must maintain under all Applicable Laws or any development order issued to County pertaining to the Airport, including, but not limited to, manifests evidencing proper transportation and disposal of Materials, environmental assessments, and sampling and test results. If requested at any time by the Aviation Department, Licensee shall provide the Aviation Department with copies of any such documents at Licensee's sole cost. Licensee shall allow inspection of the Licensed Property by appropriate federal, state, County, and local agency personnel in accordance with all Applicable Laws and as required by any development order issued to County pertaining to the Airport.

**25.12 County's Removal of Materials.** If County arranges for the removal of any Materials or the associated impacts to the environment from a release of Materials which release was directly or indirectly: (a) caused by Licensee or any of Licensee's Parties or that occurs at the Licensed Property or occurs at any other Airport property after the Effective Date; or (b) caused by any trespasser on the Licensed Property at any time during the Term of this Agreement or during any period that Licensee was in possession and control of the Licensed Property before or after the Effective Date, Licensee shall pay all costs of the removal that are incurred by County and such payment shall be made within fifteen (15) Days of County's written demand.

**25.13 Duty to Cooperate.** Nothing herein shall release Licensee of its general duty to cooperate with County in ascertaining the source and in containing, removing, abating and remediating any Materials. The Aviation Department shall cooperate with Licensee with respect to Licensee's obligations under these provisions, including making public records available to Licensee in accordance with Florida law. However, nothing herein releases Licensee of its obligations in this Agreement or creates any affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with all Applicable Laws. The Aviation Department and its employees,

contractors, and agents, upon reasonable written notice to Licensee, and the federal, state, local, and other County agencies and their employees, contractors, and agents, at all times in accordance with all Applicable Laws, shall have the right to enter the Licensed Property to exercise police powers and governmental powers and to conduct all appropriate environmental assessments, inspections, testing, sampling, examinations, and audits as deemed appropriate by the Aviation Department.

**25.14 Facility Inspections and Updated Initial Environmental Assessment.** County may require Licensee to conduct and allow County to conduct facility inspections of the Licensed Property and to provide an update to the Initial Environmental Assessment of the Licensed Property, at Licensee's sole expense: (a) prior to any assignment of this Agreement; or (b) at any time during the Term of this Agreement.

**25.15 Fee Abatement for Removal of Materials.** If County arranges for the removal of Materials on the Licensed Property that are not Licensee's responsibility to rectify, and if any such clean-up activities by County prevents Licensee from using the Licensed Property for the purposes intended, the License Fees will be abated in accordance with Article 23, hereof, from the date that the use of the Licensed Property for its intended purposes is precluded and until the Licensed Property again become available for Licensee's use. County shall use reasonable efforts to not disrupt Licensee's business. In no event is Licensee entitled to any amount on account of lost profits, lost rents, or other damages of any kind or nature as a result of County's clean-up activities and any disruption caused thereby to Licensee's operations.

**25.16 Exit Environmental Assessment.** Two (2) years before the Termination Date, or within one hundred eighty (180) Days after the date of termination if the Agreement is terminated earlier under the provisions of the Agreement, Licensee and County shall conduct an inspection of the Licensed Property and Licensee shall cause to be performed an exit environmental assessment of the Licensed Property ("Exit Environmental Assessment") at Licensee's sole expense which shall include, but is not limited to, soil and water sampling and analysis consistent with a Phase II Environmental Assessment. Licensee must develop the scope of the work for the Exit Environmental Assessment in cooperation with the Aviation Department. If the Exit Environmental Assessment or inspections indicate that further actions should be conducted, then County may have such further actions conducted by Licensee at Licensee's sole expense to County's satisfaction. Nothing herein will limit County's right of entry onto the Licensed Property under other provisions of this article or of this Agreement, or under its regulatory powers. County shall have the right to split any soil or water samples obtained by Licensee, and Licensee shall have the right to split any soil or water samples obtained by County.

(a) If County performs the inspections or the Exit Environmental Assessment due to Licensee's denial or failure to perform as required in this provision, then Licensee will reimburse County for the cost of such Exit Environmental Assessment and inspections plus any administrative costs, within fifteen (15) Days following written demand.

(b) If an Exit Environmental Assessment discloses Recognized Environmental Conditions or Materials on the Licensed Property caused by Licensee or Licensee's Parties

beyond those levels established in the Initial Environmental Assessment's baseline, Licensee shall be required to complete all required environmental remediation in compliance with Applicable Laws.

25.17 No Limitation of Rights. All rights and remedies contained in the sections and subparagraphs of this Article 25 are cumulative and are not in limitation of any other rights or remedies under this Article 25 or any other provision of this Agreement.

25.18 Survival. The provisions of this Article 25 shall survive the expiration or any other termination of this Agreement.

## ARTICLE 26. OTHER PROVISIONS

26.1 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

26.2 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, LICENSEE AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

26.3 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

26.4 Relationship of Parties. The relationship of County and Licensee hereunder is the relationship of owner and Licensee. Services provided by Licensee shall be subject to the

supervision of Licensee and such services shall not be provided by Licensee or Licensee's Parties, as agents of County.

**26.5 Third-Party Beneficiaries.** Neither Licensee nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

**26.6 Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 28 of this Agreement, the provisions contained in Articles 1 through 28 shall prevail and be given effect.

**26.7 Joint Preparation.** This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

**26.8 Incorporation by Reference.** Any and all Recital clauses and representations stated herein are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

**26.9 Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Licensee or others delegated authority or otherwise authorized to execute same on their behalf.

In the event that the United States Government, or any of its departments or agencies require modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Licensee shall 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 (collectively, a "Required Amendment"). Notwithstanding the foregoing, in the event any such Required Amendment would unreasonably interfere with the business operations of Licensee, then Licensee may refuse to consent to such Required Amendment, but Licensee must give immediate notice to County of any such refusal to consent and such notice must state with specificity the reasons for any such refusal. Upon the failure of Licensee to consent to any such Required Amendment, County shall have the right to immediately terminate this Agreement and County shall be released and relieved of all liability under this Agreement.

**26.10 Prior Agreements.** This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. Notwithstanding the foregoing, the execution of this Agreement does not have any effect on an obligation of Licensee that accrued, but was not fully performed, under any prior agreement between the Parties ("Unsatisfied Obligation"). Any such Unsatisfied Obligation is neither terminated nor waived by the execution

of this Agreement, remains in full force and effect until fully performed, and is deemed incorporated herein to the extent necessary to enforce the same.

**26.11 Materiality and Waiver of Breach.** Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**26.12 Civil Rights - General.** Licensee shall 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.

**26.13 Civil Rights - Title VII Assurances.** Licensee shall abide by and comply with the nondiscrimination requirements set forth in **Exhibit B** to the extent same are applicable by law, rule, or regulation, or federal grant requirements.

**26.14 Nondiscrimination.** Neither Party to this Agreement shall discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

Licensee shall include the foregoing or similar language in its contracts with any subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 CFR Parts 23 and 26.

**26.15 Federal Fair Labor Standards Act (Federal Minimum Wage).** This Agreement incorporates by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act ("FLSA"), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Licensee has full responsibility to monitor compliance to the referenced statute or regulation. Licensee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**26.16 Occupational Safety and Health Act of 1970.** This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Licensee must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Licensee retains full responsibility to monitor its compliance and its subcontractors' compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Licensee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**26.17 Agent for Service of Process.** If Licensee is not a resident of the State of Florida, is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then Licensee hereby designates the Secretary of State of the State of Florida as its agent for the purpose of service of process in any court action between it and County arising out of or based upon this Agreement, and service shall be made as provided by the laws of the State of Florida for service upon a non-resident who has designated the Secretary of State as agent for service. If for any reason service of such process is not possible, as an alternative method of service of process, Licensee may be personally served with such process out of this State by certified mailing to Licensee at the address set forth in this Agreement. Any such service out of this State shall constitute valid service upon Licensee as of the date of mailing. Licensee is amenable to and agrees to the process so served, submits to the jurisdiction, and waives any and all objections and protest thereto.

**26.18 Waiver of Claims.** Licensee hereby waives any claim against County and its officers, commissioners, and employees for any consequential damages, including, but not limited to, any loss of business or anticipated profits. No officer, commissioner, or employee of County shall be charged personally or held contractually liable under any term or provisions of this Agreement, including as amended, due to an actual or alleged breach of this Agreement or the execution or attempted execution of this Agreement.

**26.19 Successors and Assigns Bound.** Without waiving any of the requirements of Article 16, this Agreement shall be binding upon and inure to the benefit of the successors and the permitted assigns of the Parties.

**26.20 Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**26.21 Prevailing Wage Requirement.** If applicable, Licensee shall fully comply with the requirements of Section 26-5, Broward County Code of Ordinances including as set forth in **Exhibit E** and **Exhibit F**.

**26.22 Written Approvals.** All notices, approvals and consents required to be obtained hereunder must be in writing to be effective.

**26.23 Force Majeure.** If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, provided that the Party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other Party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) Days, the Party that is not prevented from performance by the force majeure event shall have the right to terminate this

Agreement upon written notice to the Party so affected. This section shall not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.

**26.24 MOA for Land Use Controls.** To the extent applicable, this Agreement is subject to the Memorandum of Agreement for Land Use Controls, dated July 1, 2015, between County and the Division of Waste Management, Florida Department of Environmental Protection, recorded on July 23, 2015, at instrument # 113129335 of the Official Records of Broward County, Florida, which enables County to assess and remediate contamination at the Airport consistent with applicable standards and procedures.

**26.25 Use of County Logo.** Licensee shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

**26.26 Time of Essence.** Time is of the essence with respect to this Agreement and shall apply to all terms and conditions contained in this Agreement.

**26.27 Authorized Representatives.** Unless otherwise expressly stated herein or in the applicable Procurement Code, Code of County Ordinances, or Administrative Code of Broward County, staff of the Broward County Aviation Department may act on behalf of County to exercise the authority and powers of County under this Agreement.

**26.28 Public Records.** To the extent Licensee is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Licensee shall:

- (a) Keep and maintain public records required by County to perform the services under this Agreement;
- (b) Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and
- (d) Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Licensee or keep and maintain public records required by County to perform the services. If Licensee transfers the records to County, Licensee shall destroy any duplicate public records that are exempt or confidential and exempt. If Licensee keeps and maintains public records, Licensee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of Licensee to comply with the provisions of this section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Licensee will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Licensee contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION-TRADE SECRET." In addition, Licensee must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Licensee as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Licensee. Licensee shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

**IF LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954)359-6100, SCOOPER@BROWARD.ORG, 320 TERMINAL DRIVE, SUITE 200, FORT LAUDERDALE, FLORIDA 33315.**

26.29 Survival. Upon termination or expiration of this Agreement, Licensee shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration.

26.30 No Recordation of Lease; Memorandum of Lease. Neither Licensee nor anyone acting on Licensee's behalf may record this Agreement in the Official Records of Broward County, Florida. A violation of this section by Licensee will automatically void those provisions and portions of this Lease which run to the benefit of Licensee. Licensee may record a Memorandum of Lease in the Official Records of Broward County, Florida, which Memorandum will only set forth: (a) the names of the Parties; (b) the Effective Date and Term of the Lease; and (c) the legal description of the Licensed Property. The Director of Aviation is authorized to execute a memorandum of lease on behalf of the County.

26.31 Right to Develop, Expand, and Improve Airport. County reserves the right to further

develop and improve the Airport, including but not limited to, all Public Landing Areas, as it sees fit, regardless of the desires or views of Licensee, and without interference or hindrance from Licensee, subject to Article 9. County shall have the right to develop, maintain, and operate the Airport as it deems advisable and desirable in accordance with such appropriate governmental authority and regulation as may be applicable, and County shall have the right to make such agreements as County deems necessary or advisable in connection with federal and state funding of Airport improvements, alterations, or modifications. If at any point County seeks federal, state, or local government approval regarding the operation or modification of the Airport, Licensee shall provide any and all reasonably requested cooperation and support, including, without limitation, supporting County's efforts to obtain any such approvals and executing any documents or instruments reasonably requested by County. Licensee shall not be required to bear any additional expense and shall not be deemed an agent of County.

**26.32 County as Licensor and Police and Regulatory Powers.** County is the public body, agency, or instrumentality that is a Party to this Agreement and for which this Agreement is to be performed. In all respects, County's performance under this Agreement is pursuant to County's position as landlord. In the event that County exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body, and shall not be attributable in any manner to County as a Party to this Agreement. County cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations governing the Licensed Property, any Improvements thereon, or any operations at the Licensed Property. Nothing in this Agreement shall be deemed to create an affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules, and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing in this Agreement shall be considered zoning by contract.

**26.33 Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

**26.34 Visual Artists' Rights Act.** With respect to construction or installation of any Improvements at the Licensed Property and regarding the requirements of the Visual Artists Rights Act of 1990, 17 USC §§ 106A and 113 (the "Act"), Licensee shall not (i) hire any artist or permit any other person to hire any artist for the purpose of installing or incorporating any work of art into or at the Licensed Property, or (ii) permit the installation or incorporation of any work of art in or at the Licensed Property without the prior written approval of County. Licensee shall provide such reasonable documentation as County may request in connection with any request

for such approval and the approval of County may be conditioned upon the execution by the artist of a waiver of the provisions of the Act, in form and substance acceptable to County.

**26.35 Damage to Airport Facilities.** Licensee is responsible for any and all damage to the Airport caused by the negligence of Licensee, its agents, employees, contractors, subcontractors, or invitees including, but not limited to, damage to terminal areas, ramp and Taxiway areas, engine run-up areas, Runways, hangar facilities and any and all areas where any activities are performed by Licensee.

**26.36 Airport Issued Identification Media and Emergency Response Training.** All Licensee's Parties shall obtain any required Airport Issued Identification Media and complete any emergency response training required by Section 2-43 of the Broward County Code of Ordinances. Licensee shall strictly comply with the requirements of Section 2-43 of the Broward County Code of Ordinances, including the requirement that Licensee compensate its employees, agents, representatives, contractors, and subcontractors for time spent completing the emergency response training.

## **ARTICLE 27. REPRESENTATIONS AND WARRANTIES**

**27.1 Representation of Authority.** Licensee represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable agreement of Licensee, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Licensee has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Licensee. Licensee further represents and warrants that execution of this Agreement is within Licensee's legal powers, and each individual executing this Agreement on behalf of Licensee is duly authorized by all necessary and appropriate action to do so on behalf of Licensee and does so with full legal authority.

**27.2 Solicitation Representations.** Licensee represents and warrants that all statements and representations made in Licensee's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the Effective Date of this Agreement, unless otherwise expressly disclosed by Licensee.

**27.3 Contingency Fee.** Licensee represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Licensee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

**27.4 Public Entity Crime Act.** Licensee represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Licensee further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an

act defined as a “public entity crime” regardless of the amount of money involved or whether Licensee has been placed on the convicted vendor list.

27.5 Discriminatory Vendor and Scrutinized Companies Lists. Licensee represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Licensee further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

27.6 Warranty of Performance. Licensee represents and warrants (i) it possesses the knowledge, skill, experience, and financial capability required to perform its obligations and responsibilities under this Agreement; and (ii) each person and entity that will perform on behalf of Licensee under this Agreement is duly qualified to do so by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render performance. Licensee represents and warrants that its performance under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such performance shall equal or exceed prevailing industry standards for the provision of such services.

27.7 Breach of Representations. County materially relies on the representations of Licensee stated in this article in entering into this Agreement. County shall be entitled to recover any damages it incurs to the extent any such representation is false. In addition, if any such representation is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Licensee, to deduct from the compensation due Licensee under this Agreement the full amount of any value paid in violation of a representation, or to recover all sums paid to Licensee under this Agreement.

27.8 No Set Off. Licensee represents that, through the date hereof, has no claims against County concerning any of the matters covered by this Agreement, and has no right of set off or counterclaims against any of the amounts payable by Licensee to County under this Agreement.

27.9 Environmental Disclosure. Licensee represents that the matters disclosed in **Exhibit D** are accurate and complete as of the date of execution of this Agreement.

#### **ARTICLE 28. ENTIRE AGREEMENT**

This Agreement consists of Articles 1-28, together with **Exhibits A, B, C, D, E, F, G, H, and I** and constitute the entire agreement of the Parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by County’s and Licensee’s duly authorized representatives. **Exhibits A, B, D, E, F, G, H, and I** are attached hereto and **Exhibit C** is available from the Aviation Department upon request. No representations or warranties are binding upon County unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and LICENSEE, signing by and through its authorized representative.

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
ex officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Aviation Office  
320 Terminal Drive, Suite 200  
Fort Lauderdale, Florida 33315  
Telephone: (954) 359-6100  
Telecopier: (954) 359-1292

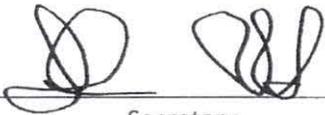
By **Sharon Thorsen** Digitally signed by Sharon Thorsen  
Date: 2021.05.11  
14:18:37 -04'00'  
\_\_\_\_\_  
Sharon V. Thorsen (Date)  
Senior Assistant County Attorney

SVT/ch  
Menzies Aviation  
Pipeline Facilities License  
4.21.21  
80071.0063

PIPELINE LICENSE AGREEMENT BETWEEN BROWARD COUNTY AND AIRCRAFT SERVICE INTERNATIONAL, INC. d/b/a MENZIES AVIATION FOR PIPELINE FACILITIES AT FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT

LICENSEE

ATTEST:

  
\_\_\_\_\_  
Secretary

AIRCRAFT SERVICE INTERNATIONAL, INC. DBA  
MENZIES AVIATION

By:   
\_\_\_\_\_

Print Name: Jennifer Gourley

Title: CFO-Americas

(CORPORATE SEAL)

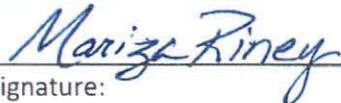
4<sup>th</sup> day of May 2021

WITNESSES:

  
\_\_\_\_\_  
Signature:

Eric Smith

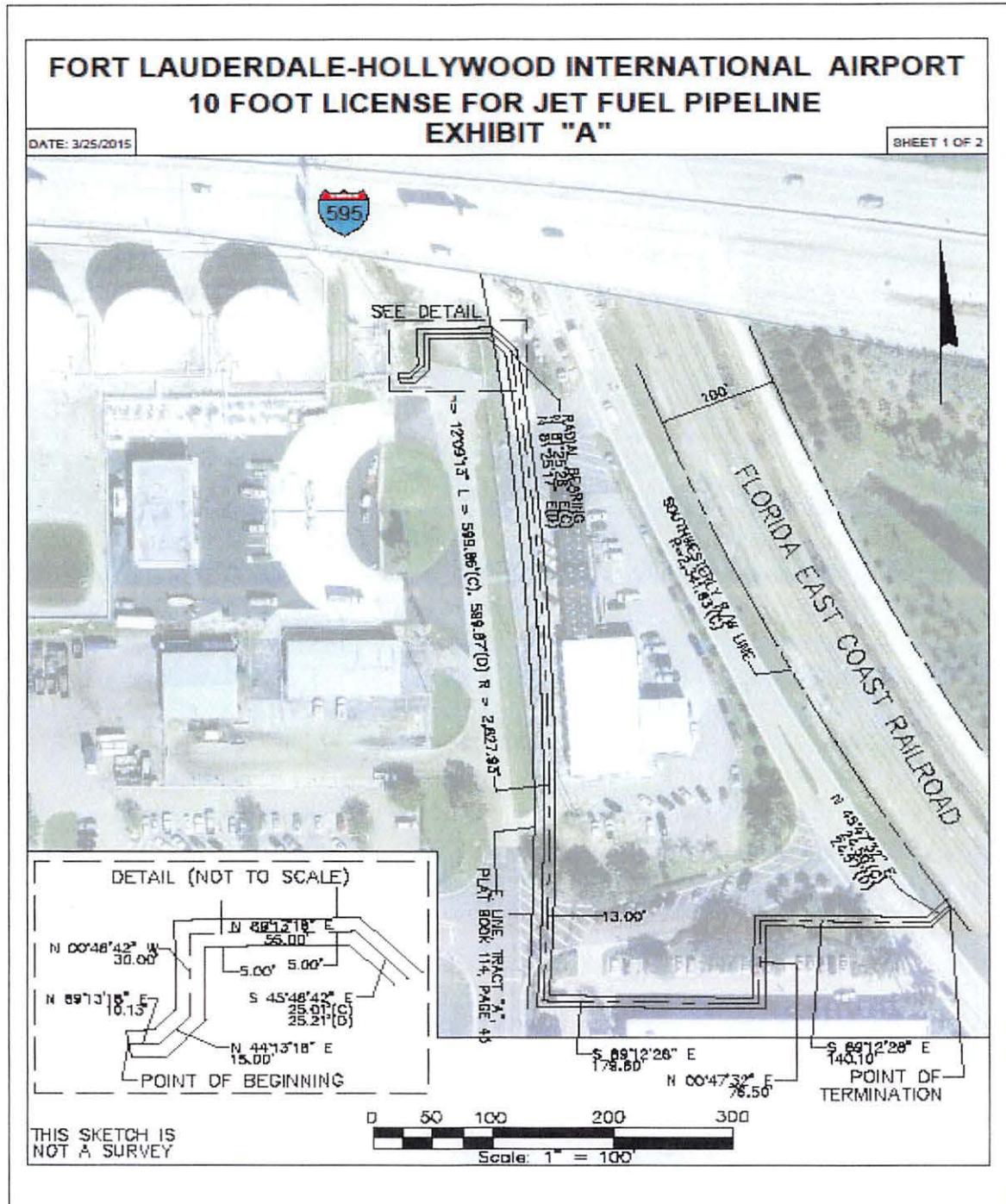
Print Name:

  
\_\_\_\_\_  
Signature:

Mariza Riney

Print Name:

EXHIBIT A - PARCEL



## EXHIBIT B - NONDISCRIMINATION REQUIREMENTS

I. During the performance of this Agreement, Licensee for itself, its personal representatives, assigns and successors in interest (hereinafter referred to collectively as "Licensee") agrees as follows:

(a) **Compliance With Regulations.** Licensee shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(b) **Nondiscrimination.** Licensee shall not discriminate on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the selection and retention of contractors or subcontractors, including procurement of materials and leases of equipment. Licensee shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c) **Solicitation for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitation either by competitive bidding or negotiation made by Licensee for work to be performed hereunder, including procurement of materials or leases of equipment, each potential contractor, subcontractor or supplier shall be notified by Licensee of Licensee's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation.

(d) **Information and Reports.** Licensee shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by County or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Licensee is in the exclusive possession of another who fails or refuses to furnish this information, Licensee shall so certify to County or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) **Sanctions for Noncompliance.** In the event of Licensee's noncompliance with the nondiscrimination provisions of this contract, County shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to: (1) withholding of payments under the contract until there is compliance, and/or (2) cancellation, termination, or suspension of the contract, in whole or in part. In the event of cancellation or termination of the contract (if such contract is a lease), County shall have the right to re-enter the Licensed Property as if said lease had never been made

or issued. These provisions shall not be effective until the procedures of Title 49 CFR Part 21 are followed and completed, including exercise or expiration of appeal rights.

(f) **Incorporation of Provisions.** Licensee shall include the provisions of paragraphs (a) through (e), above, in every contract or subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Licensee shall take such action with respect to any contract, subcontract, or procurement as County or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Licensee becomes involved in, or is threatened with, litigation with a contractor, subcontractor or supplier as a result of such direction, Licensee may request County to enter into such litigation to protect the interests of County and, in addition, Licensee may request the United States to enter into such litigation to protect the interests of the United States.

(g) Licensee, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this contract, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in federally assisted programs of DOT, and as said Regulation may be amended.

(h) Licensee, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall 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 the licensed property and the furnishing of services thereon, no person on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Licensee shall use the licensed property in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in federally assisted programs of DOT, and as said Regulations may be amended.

II. During the performance of this contract, Licensee, for itself, its assignees and successors in interest agrees as follows:

Licensee agrees to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participation in any employment, contracting, or leasing activities covered in 14 CFR Part 152, Subpart E.

Licensee agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Licensee agrees that it will require its covered suborganizations to provide assurances to Licensee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations as required by 14 CFR Part 152, Subpart E, to the same effect.

Licensee agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 CFR Part 152, Subpart E, as part of the affirmative action program, and by any federal, state, County or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order or similar mechanism. Licensee agrees that state or County affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 CFR Part 152, Subpart E, only when they fully meet the standards set forth in 14 CFR 152.409. Licensee agrees to obtain a similar assurance from its covered organizations, and to cause them to require a similar assurance of their covered suborganizations, as required by 14 CFR Part 152, Subpart E.

If required by 14 CFR Part 152, Licensee shall prepare and keep on file for review by the FAA Office of Civil Rights an affirmative action plan developed in accordance with the standards in Part 152. Licensee shall similarly require each of its covered suborganizations (if required under Part 152) to prepare and to keep on file for review by the FAA Office of Civil Rights, an affirmative action plan developed in accordance with the standards in Part 152.

If Licensee is not subject to an affirmative action plan, regulatory goals and timetables, or other mechanism providing for short and long-range goals for equal employment opportunity under Part 152, then Licensee shall nevertheless make good faith efforts to recruit and hire minorities and women for its aviation workforce as vacancies occur, by taking any affirmative action steps required by Part 152. Licensee shall similarly require such affirmative action steps of any of its covered suborganizations, as required under Part 152.

Licensee shall keep on file, for the period set forth in Part 152, reports (other than those submitted to the FAA), records, and affirmative action plans, if applicable, that will enable the FAA Office of Civil Rights to ascertain if there has been and is compliance with this subpart, and Licensee shall require its covered suborganizations to keep similar records as applicable.

Licensee shall, if required by Part 152, annually submit to County the reports required by Section 152.415 and Licensee shall cause each of its covered suborganizations that are covered by Part 152 to annually submit the reports required by Section 152.415 to Licensee who shall, in turn, submit same to County for transmittal to the FAA.

III. Licensee, for itself, its assignees and successors in interest agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person

shall, on the grounds of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation be excluded from participating in any activity conducted with or benefiting from federal assistance. This "Provision" obligates Licensee or its transferee, for the period during which federal assistance is extended to the airport program, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the Party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of Licensees, this Provision binds Licensees from the bid solicitation period through the completion of the contract.

IV. Licensees shall not discriminate on the basis of race, color, religion, gender, national origin, age, marital status, political affiliation, familial status, physical or mental disability, or sexual orientation in the performance of this contract. Failure by Licensee 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 County deems appropriate.

**EXHIBIT C**

**THE BELOW REFERENCED REPORT IS ON FILE AT THE OFFICES OF THE AVIATION DEPARTMENT**

**PARTNER Engineering and Science, Inc.  
FLL Pipeline Assessment Report  
Partner Project Number: 14-131383.1  
Dated April 6, 2015**

**EXHIBIT D - ENVIRONMENTAL DOCUMENTS**

Company Name:

**Aircraft Service International, Inc. DBA Menzies Aviation**

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Mailing Address:

**4900 Diplomacy Road**

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Street or Post Office Box

City: **Fort Worth** State: **TX** Zip Code: **76155**

Name of Environmental Representative: **David Brad Keith**

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Cell Phone Number: **602.721.4145**

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Email Address: **brad.keith@menziesaviation.com**

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Type of Agreement (Check One):

( ) Airline Service Provider Agreement

( ) Terminal Building Lease Agreement

( ) Field Usage Agreement

( ) Meals Aloft Permit

Other **Pipeline License Agreement**

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Describe the activities performed and/or services provided under this agreement:

**Transport jet A Fuel from Port Everglades to the airport-operations and maintenance performed**

---

**by Citgo**

---

Does the company use any gas, oil or other environmentally sensitive products in the operation of your business? Explain in detail.

**jet A fuel**

---

Does the company use any equipment or vehicles that use gas, oil or other environmentally sensitive products? Explain in detail.

pipeline for jet A fuel transport; operations and maintenance of the pipeline are contracted to Citgo

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Does the company perform fueling? Yes  No

Does the company use a vendor to perform fueling? Yes  No

If yes, what is the name and contact information of the fueling vendor?

---

Does the company perform aircraft or equipment maintenance? Yes  No

Does the company use a vendor for aircraft or equipment maintenance? Yes  No

If yes, what is the name and contact information of the maintenance vendor?

---

Does the company wash the exterior of planes? Yes  No

Does the company use a vendor to wash the exterior of planes? Yes  No

If yes, what is the name and contact information of the washing vendor?

---

Does the company have the following documents? Please provide a copy for the County's review:  
If not applicable, denote "NA."

1. Best Management Plan, dated NA
2. Storm Water Pollution Prevention Plan, dated NA
3. Spill Prevention Control and Countermeasures Plan, dated NA
4. Hazardous Materials Plan, dated NA
5. Other applicable environmental plans:  
NA

Is the company required to file the SARA Title III Reporting? Yes  No  (Not in relation to this pipeline)

If Yes, was last filed on (date) \_\_\_\_\_

Does the company generate or store hazardous waste or hazardous materials pursuant to 40 CFR 261?

Yes \_\_\_ No X.

If Yes, the status is \_\_\_\_\_ conditionally exempt; \_\_\_\_\_ small; \_\_\_\_\_ large quantity generator.

If required, reports were filed on (date) \_\_\_\_\_.

If Yes, what types of hazardous waste or materials do you generate or store?

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Please provide all data sheets for any products used in cleaning or maintenance.

The County, State, or Federal governments issued to the Company the following environmental licenses and/or permits: (These licenses/permits include, but are not limited to, storage tanks, hazardous material, air, solid waste, hazardous waste, industrial wastewater pretreatment, and storm water). Provide copies of all environmental licenses and permits.

Permit Name/Type	License No.	Date Expires
1. <u>NA-None related to Beeline Pipeline license</u>	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

**Note-Exhibit D response based solely upon the requirements of the pipeline license. Menzies has separate business entities for Ground Handling and M&O operations unrelated to the pipeline. Menzies has a separate agreement with Citgo for Operations and Maintenance of the Beeline Pipeline. The pipeline license has no operations regulated under Stormwater, NPDES, SPCC/FRP, Clean Air Act, Storage Tanks or Solid/Hazardous Waste**

## EXHIBIT E - PREVAILING WAGE RATES

### Prevailing Wage Rates: Pursuant to Section 26-5, Broward County Code of Ordinances:

1. The rate of wages and fringe benefit payments for all laborers, mechanics, and apprentices shall not be less than those payments for similar skills in classifications of work in a like construction industry as determined by the Secretary of Labor and as published in the Federal Register (latest revision).
2. All mechanics, laborers, and apprentices, employed or working directly upon the site of the work shall be paid in accordance with the above-referenced wage rates. Licensee shall post notice of these provisions at the site of the work in a prominent place where it can be easily seen by the workers.
3. If the Parties cannot agree on the proper classification of a particular class of laborers or mechanics or apprentices to be used, the Contract Administrator shall submit the question, together with its recommendation, to the County Administrator for final determination.
4. In the event it is found by the Contract Administrator that any laborer or mechanic or apprentice employed by Licensee, or any Subcontractor directly on the site of the work has been or is being paid at a rate of wages less than the rate of wages required by the ordinance, the Contract Administrator may: (1) by written notice to Licensee terminate its right to proceed with the work or such part of work for which there has been a failure to pay said required wages; and (2) prosecute the work or portion thereof to completion by contract or otherwise. Whereupon, Licensee and its sureties shall be liable to County for any excess costs occasioned to County thereby.
5. These provisions shall apply to Licensee, its contractors and any Subcontractors.
6. Licensee shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve such for a period of three (3) years thereafter for all laborers, mechanics, and apprentices working at the site of the work. Such records shall contain the name and address of each such employee; its current classification; rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); daily and weekly number of hours worked; deductions made; and actual wages paid.
7. Licensee shall submit, with each requisition for payment, a signed and sworn "Statement of Compliance" attesting to compliance with Broward County Ordinance No. 83-72. The Statement shall be in the form attached as **Exhibit C**.
8. The Contract Administrator may withhold or cause to be withheld from Licensee as much of the payments requisitioned as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, watchpersons, and guards employed by Licensee or any Subcontractor on the work, the full amount of wages required by this Agreement.

9. If Licensee or any Contractor or Subcontractor fails to pay any laborer, mechanic, or apprentice employed or working on the site of the work all or part of the wages required by this Agreement, the Contract Administrator may, after written notice to Licensee, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

**EXHIBIT F - STATEMENT OF COMPLIANCE  
(PREVAILING WAGE RATE ORDINANCE NO. 83-72)**

Contract No. NA No. NA  
Project Title \_\_\_\_\_

The undersigned Licensee hereby swears under penalty of perjury that, during the period covered by the application for payment to which this statement is attached, all mechanics, laborers, and apprentices, employed or working on the site of the Project, have been paid at wage rates, and that the wage rates of payments, contributions, or costs for fringe benefits have not been less than those required by Section 26-5, Broward County Code of Ordinances, and the applicable conditions of this Agreement.

Dated \_\_\_\_\_, 20\_\_

Aircraft Service International, Inc. DBA Menzies Aviation  
Licensee

By \_\_\_\_\_  
(Signature)

By Jennifer Gourley, CFO-Americas  
(Name and Title)

STATE OF )  
 ) SS.  
COUNTY OF )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ (name of person acknowledging), who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.

(NOTARY SEAL)

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name of officer taking acknowledgment)

typed, printed or stamped

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

My commission expires:

**EXHIBIT G - INSURANCE REQUIREMENTS**  
Minimum Insurance Requirements BEELINE Pipeline

TYPE OF INSURANCE YOU MUST SET FORTH ALL DEDUCTIONS SELF INSURANCE IS NOT APPROVED	Limits on Liability in Thousands of Dollars		
		Each Occurrence	Aggregate
<b>GENERAL LIABILITY</b> <input type="checkbox"/> Commercial General Liability <input type="checkbox"/> Premises–Operations <input type="checkbox"/> Explosion & Collapse Hazard <input type="checkbox"/> Underground Hazard <input type="checkbox"/> Products/Completed Operations Hazard <input type="checkbox"/> Contractual Insurance <input type="checkbox"/> Broad Form Property Damage <input type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> mobile equipment <input checked="" type="checkbox"/> Fire legal liability	Bodily Injury		
	Property Damage		
	Bodily Injury and Property Damage Combined	\$ 2 Mil	\$ 2 Mil
	Personal Injury		
<b>AUTO LIABILITY</b> <input type="checkbox"/> Comprehensive Form <input type="checkbox"/> Owned <input type="checkbox"/> Hired <input type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto If applicable	Bodily Injury (each person)		Broward County reserves the right to review and revise any insurance requirements at the time of contract renewal, not limited to the limits, coverages and endorsements based on insurance market conditions and/or changes in the scope of services.
	Bodily Injury (each accident)		
	Property Damage		
	Bodily Injury and Property Damage Combined	\$300 K non airside \$5 Mil airside	
<input checked="" type="checkbox"/> <b>POLLUTION &amp; ENVIRONMENTAL LIABILITY</b> with cleanup, including but not limited to, coverage for any underground storage tanks if located on airport property.  <b>** See Provisions in Article 12</b>	Max Ded \$10K	\$ 4 Mil	
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY (NOTE *)</b>	[x] STATUTORY		
		(each accident)	\$1 Mil
<b>Contractor responsible for all tools, materials, equipment, machinery, etc., until completion and acceptance by County. NO DEDUCTIBLE SHALL BE GREATER THAN TEN THOUSAND DOLLARS (\$10,000.00) "claims made" basis must remain in force for two (2) years after the termination of this contract</b>			
<small>Description of Operations/Locations/Vehicles Certificate must show on general liability and excess liability <b>Additional Insured: Broward County.</b> Also when applicable certificate should show Certificate Must be Signed and All applicable Deductibles shown. <b>INSURED is RESPONSIBLE FOR ALL DEDUCTIBLES UNLESS OTHERWISE STATED.</b> Indicate bid number, RLI, RFP, and project manager on COI.</small>			

Digitally signed by  
Tracy Meyer DN:  
dc=local, dc=fl-  
airport, FLLUSERS,  
cn=Tracy Me

### EXHIBIT H - PERFORMANCE BOND

BY THIS BOND, We \_\_\_\_\_, as Principal, hereinafter called Contractor, and \_\_\_\_\_, as Surety, are bound to \_\_\_\_\_, as Obligee, (hereinafter called "Licensee"), in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, Bid/Contract No.: \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with Licensee, which Contract Documents are by reference incorporated herein and made a part hereof, and may specifically include provision for Liquidated Damages, and other damages identified, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

- 1) Performs the Contract between Contractor and Licensee for construction of \_\_\_\_\_, the Contract being made a part of this Bond by reference, at the times and in the manner prescribed in the Contract; and,
- 2) Pays Licensee all losses, Liquidated Damages, expenses, costs and attorney's fees including appellate proceedings, that Licensee sustains as a result of default by Contractor under the Contract; and,
- 3) Performs the guaranties of all work and materials furnished under the Contract for the time specified in the Contract; then THIS BOND IS VOID, OTHERWISE IT REMAINS IN FULL FORCE AND EFFECT.

Whenever Contractor shall be, and declared by Licensee to be, in default under the Contract, Licensee having performed Licensee obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- a) Complete the Project in accordance with the terms and conditions of the Contract Documents; or
- b) Obtain a bid or bids for completing the Project in accordance with the terms and conditions of the Contract Documents, and upon determination by Surety of the lowest responsible Bidder, or, if Licensee elects, upon determination by Licensee and Surety jointly of the lowest responsible Bidder, arrange for a contract between such Bidder and Licensee, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term

“balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Licensee to Contractor under the Contract and any amendments thereto, less the amount properly paid by Licensee to Contractor.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Licensee named herein and Broward County.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect Surety’s obligation under this Bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

Not Applicable

\_\_\_\_\_  
(Name of Contractor)

By \_\_\_\_\_  
(Signature and Title)

\_\_\_\_\_  
(Type Name and Title Signed Above)

IN THE PRESENCE OF:

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_

\_\_\_\_\_  
Print Name

SURETY:

By \_\_\_\_\_  
Agent and Attorney-in-Fact

**DUAL/ADDITIONAL OBLIGEE RIDER**

THIS RIDER, executed simultaneously with and being part of those certain Performance and Payment Bonds (Bond No. \_\_\_\_\_) executed on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, between \_\_\_\_\_, (Contractor), and \_\_\_\_\_, (Licensee/Obligee):  
\_\_\_\_\_, Surety, in favor of

THAT THE AFORESAID BOND SHALL BE AND IT IS AMENDED AS FOLLOWS:

1. The name of the Broward County, shall be and is hereby added to the bond as a named Obligee.
2. The rights of Broward County, as a named Obligee shall be subject to Licensee or County, performing Licensee's obligations under the Contract; provided, however, that the aggregate liability of the Surety under said bond, to Licensee and County, as their interests may appear, is limited to the penal sum of said bond.
3. Except as herein modified, the aforementioned bond shall be and remain in full force and effect.

SIGNED, SEALED AND DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
SURETY

Not Applicable  
\_\_\_\_\_  
CONTRACTOR

By \_\_\_\_\_  
Attorney-in-Fact

By \_\_\_\_\_  
Title: \_\_\_\_\_

(Accompany this Rider with Attorney-in-Fact's authority from the Surety to execute Rider, certified to include the day of the Rider.)

### EXHIBIT I - PAYMENT BOND

BY THIS BOND, we \_\_\_\_\_, as Principal, (hereinafter called "Contractor"), located at \_\_\_\_\_, phone \_\_\_\_\_, and \_\_\_\_\_, as Surety, located at \_\_\_\_\_, phone \_\_\_\_\_ under the assigned Bond Number \_\_\_\_\_, are bound to \_\_\_\_\_, as Obligee, hereinafter called Licensee, in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, Contractor has by written agreement entered into a Contract, Bid/Contract No.: \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with Licensee for construction of \_\_\_\_\_, located at \_\_\_\_\_, which Contract Documents are by reference incorporated herein and made a part hereof, and for the purposes of this Bond are hereafter referred to as the "Contract";

THE CONDITION OF THIS BOND is that if Contractor:

1) Promptly makes payments to all claimants as defined by Florida Statute 255.05(1) for all labor, materials and supplies used directly or indirectly by Contractor in the performance of the Contract;

THEN CONTRACTOR'S OBLIGATION SHALL BE VOID; OTHERWISE, IT SHALL REMAIN IN FULL FORCE AND EFFECT SUBJECT, HOWEVER, TO THE FOLLOWING CONDITIONS:

- a) A claimant, except a laborer, who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, serve notice to Contractor that it intends to look to the bond for protection.
- b) A claimant who is not in privity with Contractor and who has not received payment for its labor, materials, or supplies shall no earlier than 45 days, but within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, serve notice to Contractor and to the Surety, of the performance of the labor or delivery of the materials or supplies and of the nonpayment.
- c) No action for the labor, materials, or supplies may be instituted against Contractor or the Surety unless the notices stated under the preceding conditions a) and b) have been given.
- d) Any action under this Bond must be instituted in accordance with the Notice and Time Limitations provisions prescribed in Section 255.05(2), Florida Statutes.

The Surety hereby waives notice of and agrees that any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract or the changes does not affect the Surety's obligation under this Bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Secretary

(CORPORATE SEAL)

Not Applicable

(Name of Contractor)

By \_\_\_\_\_  
(Signature and Title)

\_\_\_\_\_  
(Type Name and Title Signed Above)

IN THE PRESENCE OF:

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_

\_\_\_\_\_  
Print Name

SURETY:

By \_\_\_\_\_  
Agent and Attorney-in-Fact