



**SELF-SERVICE BAGGAGE CARTS CONCESSION AGREEMENT  
BETWEEN BROWARD COUNTY AND SMARTE CARTE, INC.**

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**SELF-SERVICE BAGGAGE CARTS CONCESSION AGREEMENT  
BETWEEN BROWARD COUNTY AND SMARTE CARTE, INC.**

This Self-Service Baggage Carts Concession Agreement (“Agreement”) is between Broward County, a political subdivision of the State of Florida (“County”), and Smarte Carte, Inc., a Minnesota corporation (“Concessionaire”) (each a “Party” and collectively referred to as the “Parties”).

**RECITALS**

- A. County owns and operates the Airport (hereinafter defined).
- B. Concessionaire is a corporation engaged in the business of operating self-service baggage cart concessions at major airports.
- C. Concessionaire currently operates a self-service baggage cart concession at the Airport pursuant to an agreement with County set to expire on May 31, 2026.
- D. County wishes to grant to Concessionaire the nonexclusive right to continue to operate a self-service baggage cart concession at the Airport pursuant to the terms of this Agreement.

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. **ACDBE** means an Airport Concession Disadvantaged Business Enterprise as defined in 49 C.F.R. Part 23 of the Regulations of the Office of the Secretary of the United States Department of Transportation.
- 1.2. **Advertisement(s)** means the advertising copy, advertising materials, and all other manners of commercial presentation placed or displayed on Concessionaire’s Carts and/or CMUs in accordance with Article 6 of this Agreement.
- 1.3. **Advertising Fees** means the monthly sum of money that is due County, calculated as a percentage of Concessionaire’s Advertising Revenues, as provided in Article 7 of this Agreement.
- 1.4. **Advertising Revenues** means the aggregate of all sales, rentals, charges or other fees charged by Concessionaire relating to Advertisements at the Airport, whether received or not, and all other items and revenues of every kind and character derived from, arising out of, or payable on account of Advertisements displayed by Concessionaire at the Airport or from the Advertisement-related activities of Concessionaire under this Agreement, whether for cash or credit, without any deduction for credit card discounts or credit card services, whether the same shall be paid or unpaid. Advertising Revenues shall include all monies paid or payable to Concessionaire and/or any of its subcontractors, assignees, contractors, or management companies that are doing business at any portion of the Airport premises. Notwithstanding the

foregoing, the term “Advertising Revenues” shall not include: (1) federal, state, or municipal taxes; (2) sales tax collection allowance retained by Concessionaire as compensation for the keeping of prescribed records and the proper accounting and remittance of state sales tax; or (3) any taxes imposed by law that are payable by Concessionaire to a taxing authority. Concessionaire shall provide documentation of the amounts of taxes paid in the form of tax receipts from the taxing agency, or copy of payment submittals and cancelled checks, and other documentation requested by the Aviation Department to substantiate the payment of taxes.

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

1.6. **Applicable Law** means all Environmental Laws and all applicable laws, codes, advisory circulars, rules, regulations, and ordinances of any federal, state, county, municipal, or other governmental entity, as amended.

1.7. **Assigned Area(s)** means the area or areas of the Airport designated by this Agreement, as set forth in **Exhibit A**, as the place or places where the business of Concessionaire may be conducted pursuant to this Agreement.

1.8. **Aviation Department** means the Broward County Aviation Department or its successor agency.

1.9. **Board** means the Board of County Commissioners of Broward County, Florida.

1.10. **Cart** means the self-service baggage cart(s) made available to the public by Concessionaire for rent pursuant to this Agreement.

1.11. **Cart Management Unit** or **CMU** means the dispensing unit(s) owned by Concessionaire and located at the Airport from which self-service baggage carts are vended to the public pursuant to this Agreement.

1.12. **Code** means the Broward County Code of Ordinances.

1.13. **Commencement Date** means the later of (i) June 1, 2026, or (ii) the date of complete execution of this Agreement.

1.14. **Concession** means the nonexclusive, self-service baggage cart concession described by this Agreement.

1.15. **Contract Year** means the twelve (12) month period beginning on the Commencement Date and ending twelve (12) months thereafter, and each twelve (12) month period thereafter until the date this Agreement expires or terminates.

1.16. **Director of Aviation** means the Director or Acting Director of the Aviation Department or such person or persons as may from time to time be authorized in writing by the 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.

1.17. **Environmental Law** means any and all applicable federal, state, County, and local statutes, ordinances, regulations, codes, rules, laws, permits, orders, advisory circulars, resolutions, development orders, grant agreements, 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, storage, transportation, or disposal of hazardous material 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 U.S.C. § 9601, et seq.); the Resources Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, et seq.); the Clean Water Act (33 U.S.C. § 1251, et seq.); the Safe Drinking Water Act (42 U.S.C. § 300, et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, et seq.); the Toxic Substance Control Act (15 U.S.C. § 2601, et seq.); Chapters 373, 376, and 403, Florida Statutes, and rules adopted thereunder; and Chapter 27 of the Code.

1.18. **Federal Aviation Administration** or **FAA** means that agency of the United States Government established under 49 U.S.C. § 106, or its successor.

1.19. **Gross Revenues** means the aggregate of all sales, rentals, charges, and other fees charged by Concessionaire at the Airport, whether received or not, and all other items and revenues of every kind and character derived from, arising out of, or payable on account of the business conducted by Concessionaire at the Airport or from the operations of Concessionaire under this Agreement, whether for cash or credit, without any deduction for credit card discounts or credit card services, whether the same shall be paid or unpaid. "Gross Revenues" includes all monies paid or payable to Concessionaire and/or any of its subcontractors, assignees, contractors, or management companies that are doing business at any portion of the Airport premises in connection with the Concession. Notwithstanding the foregoing, the term "Gross Revenues" shall not include: (1) federal, state, or municipal taxes; (2) sales tax collection allowance retained by Concessionaire as compensation for the keeping of prescribed records and the proper accounting and remittance of state sales tax; (3) actual cart return refunds made by Concessionaire as part of normal business operations; (4) any other refunds made by Concessionaire to customers, if approved by the Aviation Department and made for reasons other than unacceptable or unsatisfactory services; (5) any taxes imposed by law that are payable by Concessionaire to a taxing authority; or (6) Advertising Revenues. Concessionaire shall provide documentation of the amounts of taxes paid in the form of tax receipts from the taxing agency, or copy of payment submittals and cancelled checks, and other documentation requested by the Aviation Department to substantiate the payment of taxes.

1.20. **Improvement(s)** means any and all construction, alterations, installations, modifications, renovations, replacements, refurbishments, fixtures, permanently affixed equipment, facilities (both above ground and below ground), and any other structures now or hereafter constructed on or removed from the Assigned Areas, and all additions, alterations, modifications,

renovations, and replacements thereto. Any structure, furnishing, display, equipment, trade fixture, fixture, or any other improvement that is nailed, bolted, stapled, or otherwise permanently affixed to the Assigned Areas shall be considered permanently installed or affixed and is included within the definition of Improvement. Personalty shall not be included in this definition.

1.21. **Owner** or **Sponsor** are synonymous with County.

1.22. **Personalty** means all equipment, furniture, furnishings, and trade fixtures of Concessionaire and/or Subcontractors that is located at the Assigned Areas but not permanently affixed thereto, including but not limited to all Carts, CMUs, kiosks, and machines (and any components thereto) furnished or installed by Concessionaire in connection with the Concession.

1.23. **Privilege Fee(s)** means the fees owed by Concessionaire to County, pursuant to Article 7 herein, for the right to operate its concession business at the Airport.

1.24. **Rental Car Center** or **RCC** means the portions of the Airport's Cypress Garage that are designated for use by rental car companies for rental car concession operations.

1.25. **Subcontractor** means any entity or individual, including any subconsultant or subconcessionaire, that performs any portion of Concession services for Concessionaire, regardless of tier.

1.26. **Terminal(s)** means the terminal buildings at the Airport, including the existing buildings at Terminals 1, 2, 3, and 4 and any buildings at terminals hereafter constructed at the Airport (e.g., future Terminal 5).

1.27. **TSA** means the federal Transportation Security Administration, or its successor agency.

## ARTICLE 2. TERM

2.1 **Term**. The term of this Agreement shall commence on the Commencement Date and shall continue through May 31, 2031 ("Initial Term"), unless otherwise terminated or extended as provided in this Agreement. The Initial Term and any Renewal Term(s), as such term is defined in this article, are collectively referred to as the "Term."

2.2 **Renewals**. At least sixty (60) days prior to the conclusion of the then-current Term, Concessionaire may request in writing that the Director of Aviation renew this Agreement for one (1) additional year ("Renewal Term") on the same rates, terms, and conditions stated in this Agreement, for up to a total of five (5) such Renewal Terms. The Director of Aviation is authorized to approve, in their sole discretion, any requested Renewal Term, provided that Concessionaire is in full compliance with the terms and conditions of this Agreement at the time of the request. If the Director of Aviation approves the requested Renewal Term, written notice of same to Concessionaire within thirty (30) days after receipt of the request shall be effective and sufficient to exercise the Renewal Term; failure of the Director of Aviation to respond within such period shall be deemed a denial of the request.

### ARTICLE 3. PRIVILEGES AND OBLIGATIONS OF CONCESSIONAIRE

3.1 Concessionaire shall have the nonexclusive right, privilege, and obligation to operate the Concession at the Assigned Areas depicted on **Exhibit A**, subject to all of the terms, provisions, and conditions of this Agreement, including but not limited to those set forth in this article.

3.1.1 The charges Concessionaire may impose for Cart rentals shall be in accordance with the approved pricing listed in **Exhibit B**. Concessionaire shall not impose any time limit on Cart rentals. For Airport passengers who have rented a Cart and will be utilizing a Rental Car Center shuttle (on which Carts are not allowed), Concessionaire shall accommodate such passengers who rent a subsequent Cart after utilizing the shuttle with a credit or refund redeemable through Concessionaire's website.

3.1.2 Concessionaire may request an adjustment to the approved pricing listed in **Exhibit B** by submitting such request in writing to the Aviation Department explaining the basis for the adjustment sought. The Director of Aviation is authorized to approve, in their sole discretion, an adjustment to the approved pricing; if the Director of Aviation approves an adjustment to the approved pricing, such adjustment shall become effective as of the date in which the Director of Aviation provides Concessionaire with an updated **Exhibit B** containing the new approved pricing (and such updated **Exhibit B** shall automatically replace and supersede the then-current **Exhibit B** without the need for an amendment to the Agreement).

3.1.3 As of the Commencement Date and throughout the Term, Concessionaire shall operate the Concession at all of the Assigned Areas depicted on **Exhibit A** and shall maintain an inventory of no less than six hundred fifty (650) Carts located and available for use at the Airport. During the Term, Concessionaire shall not make any substantive changes to the number of Carts (defined as a change equal to or greater than five percent (5%) of the number of Carts) without the prior written approval of the Aviation Department. Concessionaire shall ensure that each Assigned Area has at least one (1) operable CMU at all times throughout the Term. Upon request by the Aviation Department, Concessionaire shall provide the Aviation Department with a list of all CMUs planned for use or in use at the Assigned Areas and the number of Carts that it, on average, offers or will offer in each CMU.

3.1.4 Within twelve (12) months following the Commencement Date, Concessionaire shall replace and/or refurbish, to the Aviation Department's satisfaction, the equipment as described in **Exhibit C**. Within thirty (30) days after Concessionaire's completion of such work, Concessionaire shall provide written notice to the Aviation Department of same. The replacement and/or repurposing shall not be deemed complete unless and until the Aviation Department has provided its written approval, which approval shall not be unreasonably withheld. If the Aviation Department identifies any deficiencies, Concessionaire shall promptly correct such deficiencies at its sole cost and expense and resubmit for approval.

3.1.5 If at any point during the Term, Concessionaire desires to make any further changes or substitutions to the equipment required under this Agreement (other than any changes permitted under Section 3.1.3 or the equipment replacement and/or refurbishment required under Section 3.1.4), Concessionaire shall submit a written request to the Director of Aviation stating the reason for the change or substitution of equipment and providing details and specifications of such change or substitution. The Director of Aviation shall respond in writing to the request for the change or substitution within thirty (30) days after receipt; failure by the Director of Aviation to respond within such period shall be deemed a denial of the request. If the Director of Aviation approves the requested change or substitution to the equipment, the Director of Aviation's response shall include a required time frame for Concessionaire to complete the requested change or substitution ("Equipment Change Deadline"). A failure by Concessionaire to make such change or substitution prior to the Equipment Change Deadline shall be a default of this Agreement. Immediately upon properly completing any approved change or substitution of the equipment, Concessionaire shall notify the Director of Aviation of such completion in writing; the Director of Aviation shall provide Concessionaire with an updated **Exhibit C** containing the changes or substitutions to the equipment (and such updated **Exhibit C** shall automatically replace and supersede the then-current **Exhibit C** without the need for an amendment to the Agreement).

3.1.6 Concessionaire has the right to sell Advertising on Carts and CMUs, provided all Advertising content complies with the Aviation Department's Advertising Policy for the Fort Lauderdale-Hollywood International Airport and North Perry Airport ("Advertising Policy"), which determination shall be made by the Aviation Department in its sole discretion, and Concessionaire obtains the prior written approval of the Aviation Department regarding any proposed Advertising content.

3.1.7 Concessionaire shall permit the inspection by the Aviation Department or its authorized representatives of any equipment used by Concessionaire at the Airport pursuant to this Agreement.

3.1.8 Should a conflict arise regarding the scope of the Concession privileges authorized under this Agreement, the Director of Aviation will determine the appropriate scope in order to resolve such conflict, and any decision of the Director of Aviation shall be final and binding on the Parties.

3.2 County, while providing parking facilities to Concessionaire's employees in common with employees of other concessionaires and users of the Airport, retains the right, at the sole election of County, to impose a reasonable charge for the privilege of utilizing those parking facilities. If Concessionaire wishes to lease additional office or support space, other than the Assigned Areas, solely for the purpose of the operation of the Concession pursuant to this Agreement, Concessionaire may lease additional space identified by the County as available for such purpose. In such event, Concessionaire shall be required to enter into a Terminal Building Lease Agreement with County subject to all terms and conditions included therein.

3.3 Concessionaire must have and maintain throughout the Term all required permits, licenses, and approvals to authorize Concessionaire to operate the Concession within Broward County, Florida.

3.4 It is understood and agreed between County and Concessionaire that County maintains and operates the Airport as a public facility. In order to render proper airport services to the public, it is required that Concessionaire shall provide and make available to the public at the Airport the Concession services set forth in this Agreement. A failure by Concessionaire to provide any of the Concession services required under this Agreement shall constitute a breach of this Agreement, entitling County to immediately terminate the Agreement.

3.5 Concessionaire, its employees, agents, and independent contractors shall have ingress to and egress from the Airport premises over Airport public roadways, subject to all laws, ordinances, rules, and regulations that have been established or shall be established in the future by the Airport, County, or the State of Florida. County may, from time to time, substitute other means of ingress and egress. County may at any time temporarily or permanently close or consent to or request the closing of any entrance or other roadway, or any other area at the Airport presently or hereafter used as a roadway. Concessionaire hereby releases and discharges County, its successors, and assigns, of and from any and all claims, demands, or causes of action that Concessionaire may now or at any time hereafter have against any of the foregoing arising or alleged to arise out of the closing of any street, roadway, or other area used as such, whether within or outside the Airport.

3.6 Within sixty (60) calendar days after the end of each Contract Year, the Aviation Department and Concessionaire will tour the Assigned Areas to determine if any Improvement is required to maintain the Assigned Areas in a first-class condition. If the Aviation Department determines in its sole discretion that an Improvement is required, the Aviation Department shall notify Concessionaire in writing and Concessionaire shall have thirty (30) calendar days from such notice to complete the Improvements.

3.7 County has the right, through its Director of Aviation in their sole discretion, to require Concessionaire to operate in locations different from, or in addition to, the Assigned Areas set forth in **Exhibit A**, as may be amended. If so directed by County, Concessionaire shall be required to use such reassigned Assigned Areas without additional expense to County and without any abatement of any of the sums payable by Concessionaire to County hereunder. Concessionaire shall, upon at least thirty (30) days prior written notice, operate out of such reassigned Assigned Areas, provided such reassigned Assigned Areas will, at the direction of the Aviation Department, include only existing CMUs relocated from other Assigned Areas; if the reassigned Assigned Areas will require new or additional CMUs as determined by the Aviation Department, Concessionaire shall, upon at least two hundred ten (210) days prior written notice, operate out of such reassigned Assigned Areas. If any Assigned Area is reassigned pursuant to this section, the Director of Aviation shall provide Concessionaire with an updated **Exhibit A** depicting the new or modified Assigned Areas (and such updated **Exhibit A** shall automatically replace and supersede the then-current **Exhibit A** without the need for an amendment to the Agreement). Upon

receiving County's notice, Concessionaire may request, in writing, to meet with the Director of Aviation and discuss any significant negative business impact Concessionaire believes it will suffer as a result of the required relocation. After meeting with Concessionaire, the Director of Aviation, in the Director of Aviation's sole discretion, will determine whether any adjustment decreasing or increasing the Privilege Fee is warranted. If the Director of Aviation determines that an adjustment is warranted, an amendment to this Agreement reflecting the proposed change shall be submitted to the Board for its consideration.

3.8 During installation and/or removal of any Personalty or Improvements, Concessionaire shall maintain the public areas surrounding the Assigned Areas in a clean and orderly condition.

3.9 County makes no representations or warranties whatsoever as to: (i) the condition of the Assigned Areas or any Improvements or personal property in the Assigned Areas, including without limitation all Improvements currently installed at such locations and all future Improvements to be installed thereto, or (ii) whether the Assigned Areas or any Improvements or personal property in the Assigned Areas are in compliance with Applicable Law, or (iii) the fitness of the Assigned Areas or any Improvements or personal property in the Assigned Areas, for any particular purpose. Concessionaire specifically obligates itself to conduct its own due diligence investigation as to the suitability of the Assigned Areas and any such Improvements for Concessionaire's purposes. The Assigned Areas and all Improvements therein are provided for Concessionaire's use in "**AS IS CONDITION**" and "**WITH ALL FAULTS.**" Concessionaire shall not be entitled to any adjustment of any Privilege Fees or Advertising Fees, or other amounts due hereunder, on account of the condition of the Assigned Areas or any Improvements or any failure of any Improvements thereto to be in working order or because of any necessity of Concessionaire to repair or take corrective actions with respect to any Improvements or because of any inability in obtaining or any delay in obtaining any required approvals from any governmental body having jurisdiction, including but not limited to, County agencies. Furthermore, Concessionaire hereby releases County of any and all claims and liabilities whatsoever on account of the condition of the Assigned Areas and/or any Improvements, or any failure of any Improvements to be in working order, or because of any necessity of Concessionaire to repair or take corrective actions with respect thereto, or the necessity for obtaining any approvals from any governmental body, including without limitation County agencies.

#### **ARTICLE 4. IMPROVEMENTS BY COUNTY**

4.1 County will provide the following for the Assigned Areas:

4.1.1 Exterior walls, all structural roof construction, all structural floor construction, and all exterior window walls designed about the perimeter and ceiling, finishes, and common walls as are presently in place at the Assigned Area or may be installed by County to any new Assigned Area.

4.1.2 Trunk lines for heating, air conditioning service, electrical service, data, and water as are presently brought to the Assigned Area. Concessionaire, at its cost, with the prior

written consent of the Aviation Department, may connect to any nearest utility location for any new Assigned Area.

4.2 All Improvements now existing and any additions, alterations, or Improvements made to the Assigned Areas by Concessionaire (except Personalty not permanently affixed to the Assigned Areas) shall become County's property upon construction or installation, and shall be surrendered with and remain at the Assigned Areas upon termination of this Agreement, free and clear of any liens, claims, or encumbrances whatsoever. Any addition, fixture, or other Improvement that is nailed, bolted, stapled, or otherwise affixed to the Assigned Areas and is not readily removable shall remain at the Assigned Areas upon termination of this Agreement. All utility conduits installed at the Assigned Areas, including, without limitation, cable, electric, and telecommunications, shall be owned by County upon installation. All such conduits shall be free of all liens, claims, and encumbrances, including, without limitation, any claims of any utilities provider.

4.3 County shall have the right to conduct any Improvements over, in, under, or through the Assigned Areas as deemed necessary by the Aviation Department.

#### **ARTICLE 5. IMPROVEMENTS BY CONCESSIONAIRE**

5.1 Concessionaire, at its sole cost, shall install all furnishings, equipment, and construct or refurbish any Improvements or facilities to the Assigned Areas necessary for the operation of the Concession.

5.2 No Improvements may be constructed or installed on the Assigned Areas unless Concessionaire obtains the prior written approval of the Aviation Department.

5.3 Concessionaire must provide identification signage on all CMUs, subject to the prior written approval of the Aviation Department. All signage and supplies shall be consistent with the graphic standards of the Airport. Instructional signage on the CMUs must be in at least two (2) languages, including at a minimum English and Spanish. All CMUs shall bear a toll-free telephone number in a clearly legible typeface for customers to call Concessionaire for assistance, complaints, refunds, and other inquiries. Concessionaire may install and maintain other appropriate signage in the Assigned Areas provided that the design, installation, and maintenance of such signs shall be consistent with the graphic standards of the Airport, and Concessionaire must obtain the written approval of the Aviation Department prior to installation.

5.4 Prior to the commencement of construction or refurbishment of any facilities in the Assigned Areas, Concessionaire shall submit an application for a tenant improvement project ("TIP") to the Aviation Department for its written approval, including the following: a site plan, schematic rendering, and complete construction drawings and plans and specifications of the contemplated construction. Concessionaire shall ensure that the plans and specifications are certified by an architect or engineer licensed to practice in the State of Florida and include: (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. All construction, Improvements, signs, equipment, and landscaping must be made in accordance with the requirements set forth in this Agreement and must conform to the standard requirements of the Aviation Department applicable to concessionaires of the Airport. All of the plans and specifications shall be in such detail to permit the Aviation Department to make a determination as to whether the construction or refurbishment of the facilities in the Assigned Areas will be consistent with the provisions of this Agreement and the standards of the Aviation Department. The plans and specifications for construction or refurbishment of the facilities in the Assigned Areas that have received the Aviation Department's written approval, and any amendments and changes thereto that have received the Aviation Department's written approval, are hereinafter referred to, collectively, as the "Approved Plans." No construction work may be performed in the Assigned Areas except pursuant to Approved Plans. At the direction of the Aviation Department, Concessionaire, at its sole cost, shall remove any work that is started or completed without Approved Plans, and the Assigned Areas shall be restored to the condition the Assigned Areas were in prior to the work.

5.5 All plans and specifications, including, without limitation, "as-built" plans, shall identify the purpose of utilities and any conduits by generic reference only (e.g., "phone conduit," "telecommunication 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. No material changes shall be made to any Approved Plans without the prior written approval of the Aviation Department, which approval shall not be unreasonably withheld or delayed. Any change that requires the issuance of a building permit or modifies an existing building permit shall be considered a material change.

5.6 Any and all construction shall be performed in such a manner as to ensure that the construction or refurbishment in any portion of the Assigned Areas shall:

5.6.1 Be structurally sound, safe for human occupancy, and free from any hazards;

5.6.2 Be high quality, safe, fire resistant, and attractive in appearance;

5.6.3 Comply with the provisions of the deed under which County acquired its title to the Airport from the United States of America, and the provisions of any grant agreements or other agreements between County and the United States Government or the State of Florida that are applicable to the Assigned Areas;

5.6.4 Ensure that all construction and development undertaken shall, to the extent possible and commercially practicable, be completed in an environmentally conscientious manner; and

5.6.5 Comply with the terms and provisions of this Agreement.

5.7 All development within the Airport shall be consistent with the Airport's Tenant Design Guidelines, as it may be updated, revised, or amended by the Aviation Department from time to time. The Aviation Department may, in its sole discretion, permit a variation from the required standards in the Tenant Design Guidelines.

5.8 The Aviation Department may refuse to grant approval of any design, materials, Improvements, or construction contained in a TIP application if, in the Director's opinion, Concessionaire has not satisfied the requirements set forth in this article, or any other provisions of this Agreement, or for any other reason whatsoever, in the sole discretion of the Director.

5.9 All Improvements, equipment, and interior design and decor constructed or installed by Concessionaire or any Subcontractors, including the plans and specifications relating to same, shall conform to Applicable Law. The approval by County of the Approved Plans shall not constitute a representation or warranty as to such conformity, and the responsibility for compliance shall at all times remain with Concessionaire.

5.10 If required by the Aviation Department, before commencing any construction or refurbishment permitted under this Agreement, Concessionaire shall require the contractors performing any such work to maintain, at all times, a valid payment bond and a valid performance bond (collectively, "Bonds"). Each Bond shall be in the amount of one hundred percent (100%) of the contract price for such work. The Bonds shall guarantee the completion and performance of the work, as well as full payment of all suppliers, material providers, laborers, and subcontractors employed for such work. Concessionaire shall provide the Aviation Department with certified copies of the recorded Bonds prior to the commencement of any work or construction.

5.11 Upon obtaining the Approved Plans and in accordance with a schedule approved by the Aviation Department, Concessionaire shall obtain all necessary governmental approvals. Concessionaire shall immediately begin construction, installation, or refurbishment, as applicable, of the approved facilities and Improvements pursuant to the Approved Plans, and shall pursue the same to completion by the date agreed to between Concessionaire and the Aviation Department. Any work impacting portions of the Airport other than the Assigned Areas shall be performed within schedules approved by the Aviation Department.

5.12 If requested by the Aviation Department, Concessionaire and its architect/engineer and contractor shall meet with the Aviation Department in periodically scheduled meetings to assess the current status of completion of any construction, installation, or refurbishment.

5.13 Within one hundred eighty (180) days after the receipt of a Certificate of Occupancy ("CO"), or, if a CO is not required, within one hundred eighty (180) days after completion of the TIP, or at such other time as requested by the Aviation Department, Concessionaire shall provide to the Aviation Department a certified statement from the general contractor stating that: (a) the Improvements are free and clear of all liens, claims, or encumbrances by any material suppliers, subcontractors, or laborers; and (b) the Improvements have been constructed in accordance with the Approved Plans and in compliance with all applicable laws and regulations.

Concessionaire shall provide, upon request, such back-up documentation and release of liens as may be required by County.

5.14 Concessionaire hereby represents, warrants, and covenants to County that the Assigned Areas and all Improvements now and hereafter constructed or placed thereon shall be at all times free and clear of all liens, claims, and encumbrances. If any lien or notice of lien is filed against the Assigned Areas or any Improvements, Concessionaire shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order by a court of competent jurisdiction.

5.15 Within one hundred eighty (180) days after the receipt of the CO, or, if a CO is not required, within one hundred eighty (180) days after the completion of the TIP, Concessionaire shall, at its expense, provide the Aviation Department with a complete set of "as-built" plans and specifications, including Mylar reproducible "record drawings," and one set of machine readable disks containing electronic data in an AUTOCAD format that meets the Aviation Department's graphic standards of the "as-constructed" or "record" plans for such Improvements.

5.16 In addition to the Aviation Department's approval, Concessionaire shall obtain all required approvals from all other agencies having jurisdiction over any Improvements, including, but not limited to, departments, divisions, or offices of County and local governments, the State of Florida, and the federal government.

5.17 If applicable or necessary, the Improvements must be coordinated with the FAA, including the filing of required forms and the provision of any documentation the FAA may request.

5.18 All Improvements shall be in conformity and consistent with all applicable provisions of Applicable Law, including the Americans with Disabilities Act of 1990, as amended.

5.19 Prevailing Wage Requirement. If construction work in excess of \$250,000 is required of, or undertaken by, Concessionaire as a result of this Agreement, then Section 26-5 of the Code shall apply to such construction work, the provisions of Section 26-5(a) of the Code shall be deemed incorporated as if expressly set forth herein, and Concessionaire must submit, with each invoice or application for payment, a completed Statement of Compliance in the form available at <https://www.broward.org/Purchasing/Pages/StandardTerms.aspx>.

5.20 Concessionaire shall not alter the Airport premises in any manner whatsoever except as expressly provided for in this Agreement with the prior written approval of the Aviation Department. Concessionaire acknowledges and agrees that during Term: (i) County shall have the right at all times to make Improvements, changes, alterations, modifications, replacements, expansions, and contractions of the Airport and its operations; and (ii) County has made no representations, warranties, or covenants to Concessionaire regarding the design, construction, traffic, pedestrian traffic, or views of the Airport, any other facility, or any premises.

## ARTICLE 6. ADVERTISING

6.1 Concessionaire shall have the right and privilege to sell advertising space on its Carts and CMUs, provided all Advertising content complies with the Aviation Department's Advertising Policy, which determination shall be made by the Aviation Department in its sole discretion. Concessionaire shall obtain the prior written approval of the Aviation Department regarding any Advertisement to be placed or displayed on its Carts and CMUs.

6.2 Concessionaire shall provide both local and nonlocal companies the opportunity to purchase advertising space.

6.3 Concessionaire shall not allow any Advertisements at the Airport that are prohibited by the Aviation Department's Advertising Policy (e.g., Advertisements containing obscene or violent content), which determination shall be made by the Aviation Department in its sole discretion. Concessionaire shall promptly remove any such prohibited Advertisements, if so directed by the Aviation Department. If such Advertisements are not removed within twelve (12) hours after Concessionaire's receipt of written notice by the Aviation Department, the Aviation Department shall have the right to remove the Advertisements and charge Concessionaire for all costs and expenses related to the removal thereof, and Concessionaire shall pay County the full amount of all such costs and expenses upon receipt of an invoice for same.

6.4 Except as provided elsewhere in this Agreement, Concessionaire will pay all expenses associated with Advertisements on CMUs and Carts including all costs associated with planning, designing, installing, and removing the Advertisements.

## ARTICLE 7. PRIVILEGE FEES, CHARGES, AND ACCOUNTABILITY

7.1 For the privilege of operating the Concession at the Airport, Concessionaire agrees to pay to County the fees as described below during the Term:

7.1.1. Concessionaire shall pay to County a Privilege Fee equal to five percent (5%) of the Gross Revenues, computed and payable on a monthly basis.

7.1.2. Concessionaire shall pay to County Advertising Fees equal to fifty percent (50%) of the Advertising Revenues, computed and payable on a monthly basis.

7.2 On or before the fifteenth (15th) calendar day of each month, Concessionaire shall submit to County a Monthly Revenue Report for the preceding month, using the form set forth in **Exhibit D** attached hereto, along with payment of the Privilege Fees and Advertising Fees due for that month. The Monthly Revenue Report shall indicate the Gross Revenues and the Advertising Revenues (as a separate item) for the preceding month, and shall be signed by an officer, a partner, or other person authorized to sign on behalf of Concessionaire. **Exhibit D** may from time to time be revised by the Aviation Department and the revised **Exhibit D** shall be provided to Concessionaire.

7.3 County shall have the right to audit all of Concessionaire's books and records relating to Concessionaire's operations pursuant to this Agreement in order to determine the correctness of the Privilege Fees and Advertising Fees paid by Concessionaire to County for any Contract Year. If any such audit reflects that the total Privilege Fees or Advertising Fees actually paid by Concessionaire during the applicable Contract Year exceeds the Privilege Fees or Advertising Fees due and owing for such Contract Year, then a refund will be made by County to Concessionaire in the amount of such difference, which may be credited against the Privilege Fees or Advertising Fees due for the succeeding Contract Year. If any such audit reflects that the total Privilege Fees or Advertising Fees actually paid by Concessionaire during such Contract Year are less than the Privilege Fees or Advertising Fees due and owing for such Contract Year, then Concessionaire shall immediately pay the difference to County, plus interest due thereon at eighteen percent (18%) per annum from the date such additional Privilege Fee or Advertising Fee amount was due, upon written demand therefor.

7.4 Concessionaire shall keep and maintain copies of all invoices, cash receipts, financial records, supporting records, supporting documents, statistical records, and all other documents pertinent to this Agreement (collectively, "books and records"). The books and records of Concessionaire shall, among other things, show all sales made for cash, credit, or otherwise, without regard to whether paid or not, all labor, overhead, and all sales taxes collected, the Gross Revenues and the Advertising Revenues, and the aggregate amount of all sales and services and orders of all Concessionaire's business done in connection with this Agreement or the Airport. Concessionaire shall keep its books and records in accordance with generally accepted accounting principles and shall maintain such other books and records as County may request. Concessionaire shall maintain a separate accounting for its Airport operations.

7.4.1 Concessionaire's books and records shall be kept and maintained during the Retention Period (as hereinafter defined). The "Retention Period" is defined as the greater of: (i) the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable; (ii) the period of time covering the Term of this Agreement and any extensions thereof and for a period of three (3) years after the expiration of this Agreement; or (iii) if any audit has been initiated and audit findings have not been resolved at the end of such three (3) year period, the books and records shall be retained until resolution of the audit findings. If the State of Florida public records act is determined by County to be applicable to Concessionaire's records, Concessionaire shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Concessionaire. Concessionaire shall make all books and records required to be maintained hereunder available to County at the Airport, at the Aviation Department offices, or such other place that may be directed by County.

7.4.2 County shall have the right, upon reasonable notice to Concessionaire, at any time during the Retention Period, to review, inspect, and/or audit Concessionaire's books and records relating to Concessionaire's operations at the Airport pursuant to this Agreement.

7.4.3 If, as a result of any audit, it is established that Concessionaire has understated the Gross Revenues or the Advertising Revenues from all operations covered by this Agreement by three percent (3%) or more (after any deductions and exclusions provided for herein) during the period covered by the audit, the entire expense of said audit shall be borne by Concessionaire. The provisions of Section 7.4 shall survive the expiration or termination of this Agreement.

7.5 Annually, Concessionaire shall provide to the Finance Division of the Aviation Department a special audit report on all Gross Revenues and Advertising Revenues from operations related to this Agreement. The special audit report shall be prepared by an independent certified public accountant in accordance with the provisions of the "Codification of Statements on Auditing Standards" published by the American Institute of Certified Public Accountants. The special audit report shall be filed with the Finance Division of the Aviation Department within ninety (90) days after the conclusion of each Contract Year and shall include the following:

7.5.1. Schedule of all revenues from each CMU for each calendar month, specifically setting forth both the Gross Revenues and refunds, if any, given to patrons.

7.5.2. Schedule of all Advertising Revenues for each calendar month.

7.5.3. A calculation to determine that the total annual Privilege Fees and Advertising Fees have been paid in accordance with this Agreement. The special audit report shall include an opinion on the schedule of all revenues by month, the schedule of payments to County, and the calculation of Privilege Fees and Advertising Fees.

The special audit report shall include an opinion on the schedule of all revenues by category and by month, the schedule of payments to County, and the calculation of Privilege Fee. The procedures for the preparation of the special audit report are defined in the Aviation Department's Numbered Procedures Manual.

7.6 Licenses, Fees, and Taxes. Concessionaire shall pay, on or before their respective due dates, 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 any premises used by Concessionaire or the estate hereby granted, or upon Concessionaire, or upon the business conducted by Concessionaire, or upon any of Concessionaire's property used in connection therewith, or upon any sums payable hereunder, including, but not limited to, any ad valorem, tangible property, or intangible property taxes, and sales or excise taxes on any sums payable hereunder. Concessionaire shall maintain in current status all federal, state, County, and local licenses, business tax receipts, and permits required for the operation of the business conducted by Concessionaire. In addition, Concessionaire shall be responsible for any and all other taxes that are due, or that may become due, pursuant to Chapter 212, Florida Statutes, as it may be amended from time to time, and any implementing regulations.

7.7 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 on any amounts that are past

due under this Agreement. The right of County to require payment of such interest and the obligation of Concessionaire to pay same shall be in addition to and not in lieu of the right of County to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

7.8 Other Fees and Charges. Concessionaire acknowledges that County has or will establish, from time to time, various fees and charges for the use of various facilities, equipment, and services provided by County and provided to Concessionaire hereunder, and procedures relating to payment of same. Concessionaire shall pay for its use of such facilities, equipment, and services at the rates and in the manner prescribed by County.

7.9 Additional Charges. If County is required or elects to pay any sum(s) or incur any obligations or expense by reason of the failure, neglect, or refusal of Concessionaire to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Agreement, or as a result of any act or omission of Concessionaire contrary to said conditions, covenants, or agreements, Concessionaire agrees to pay the sum or sums so paid by County or the expense so incurred by County, including all interest, costs, damages, and penalties, and the same may be added to any installment payment thereafter due hereunder. Each and every part of any such sum(s), obligations or expenses shall be and become additional fees recoverable by County in the same manner and with like remedies as if it were originally a part of the Privilege Fee payable under this Agreement. All such sums of money shall be paid by Concessionaire within thirty (30) days after written demand thereof.

7.10 Dishonored Check or Draft. If Concessionaire delivers a dishonored check or draft to the Aviation Department in payment of any obligation arising under this Agreement, Concessionaire shall incur and pay a service charge in the amount established by the Aviation Department from time to time, along with interest thereon at eighteen percent (18%) per annum from the original due date of such dishonored check or draft without further demand. 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.

7.11 Place of Payments. All payments required to be made by Concessionaire under this Agreement shall be made payable to "Broward County," and shall be paid to the Finance Division, Broward County Aviation Department, at 320 Terminal Drive, Suite 200, Fort Lauderdale, Florida 33315, or to such other office or address as designated in writing by the Director of Aviation.

7.12 Utilities. Concessionaire must pay for all utilities consumed at or utilized in connection with the Assigned Areas. If Concessionaire wishes to install any utility other than that provided by County, Concessionaire must obtain prior written approval from County. If Concessionaire installs additional utilities, at the discretion of County, a consumption audit will be undertaken at Concessionaire's expense for utilities consumed at or utilized in connection with the Assigned Areas. After the preliminary consumption audit, consumption audits may be undertaken by County no more frequently than annually, with all costs borne by Concessionaire. Utility charges that are invoiced by County must be paid by Concessionaire within ten (10) days after receipt of invoice by Concessionaire.

## **ARTICLE 8. OPERATIONAL STANDARDS**

8.1 Concessionaire shall provide and make available the Concession services at the Assigned Areas as required by this Agreement. Concessionaire shall not change, remove, or modify any services required by this Agreement without the prior written consent of the Aviation Department. Concessionaire shall notify the Aviation Department in writing of any removal or replacement of any Carts and/or CMUs at the Airport, including but not limited to any removal or replacements due to necessary repairs or upgrades to such equipment. Concessionaire shall not undertake any such removal or replacement of Carts and/or CMUs without obtaining the prior written approval of the Aviation Department.

8.2 Concessionaire shall forward to the Aviation Department, on a monthly basis, a list of any complaints, whether verbal or written, accompanied by Concessionaire's resolution of all such complaints. Questions or complaints regarding the quality of service or rates, whether raised by customer complaints or on the Aviation Department's own initiative or otherwise, may be submitted to Concessionaire for response. Concessionaire shall provide a written response within seven (7) calendar days following submission. A failure to respond to a question or complaint within the allotted time period shall result in Concessionaire being assessed a Disincentive Fee (hereinafter defined), pursuant to Section 8.19.

8.3 At the Aviation Department's request, Concessionaire shall meet with the Aviation Department to review any questions, complaints, or concerns and to promptly correct any deficiencies. The Aviation Department's determination as to the quality of Concessionaire's operations or services shall be conclusive and curative measures as determined to be necessary by the Aviation Department shall be implemented by Concessionaire as expeditiously as possible.

8.4 Concessionaire shall ensure that the management, maintenance, and operation of the Assigned Areas shall at all times be under the supervision and direction of an active, qualified, competent managerial employee of Concessionaire ("Manager") who shall at all times be subject to the direction and control of Concessionaire.

8.5 Concessionaire shall assign a duty station(s) in the Assigned Areas where the Manager shall be available during normal business hours. Concessionaire shall assign a qualified subordinate, subject to the direction and control of Concessionaire, to be available and in charge of the Assigned Area(s) and the products and facilities offered under this Agreement in the absence of the Manager. Concessionaire shall supply the Aviation Department with one or more telephone number(s) at which the Manager or a designated subordinate, empowered to address service issues, can be reached on a twenty-four (24) hour per day basis.

8.6 Concessionaire is responsible for all maintenance and repairs of all Carts and CMUs, including but not limited to, any necessary maintenance or repairs due to vandalism, and all other Improvements installed at the Assigned Areas, and shall take all necessary actions to maintain the Carts and CMUs in an "as-new" condition.

8.7 Concessionaire shall develop a written policy outlining the rules, regulations, and operating procedures that apply to its employees and submit same for approval of the Aviation Department within sixty (60) days after execution of this Agreement. Concessionaire shall not modify or deviate from the approved policy without the prior written approval of the Aviation Department. A failure of Concessionaire to comply with the policy approved by the Aviation Department shall be deemed a default under this Agreement, entitling County to exercise any and all remedies available hereunder. Concessionaire shall comply with the rules, regulations, and operating procedures contained within the approved policy. Concessionaire shall comply with Applicable Law, including but not limited to, those rules published by the Aviation Department with respect to the Airport.

8.8 The operations of Concessionaire and any Subcontractors shall be conducted in an orderly and proper manner so as not to annoy, disturb, or be offensive to others. All employees of Concessionaire and any Subcontractors must conduct themselves at all times in a courteous manner toward the public and in accordance with the rules, regulations, and policies developed by Concessionaire and approved by the Aviation Department.

8.9 Concessionaire shall retain and deploy employees in sufficient number to properly conduct Concessionaire's operations. Concessionaire shall provide its employees with uniforms that shall be distinctive and subject to approval by the Aviation Department. All employees shall be required to wear the appropriate approved uniform at all times when on duty. Concessionaire shall ensure that the employees and their uniforms are clean and neat.

8.10 Concessionaire, while conducting its operations, shall not impede the flow of passengers traveling through the Airport.

8.11 Concessionaire shall at all times retain qualified, competent, and experienced employees at the Airport to conduct its operations. Concessionaire's employees shall be clean, courteous, efficient, and neat in appearance. Concessionaire shall ensure its employees do not use improper language, or act in a loud, boisterous, or otherwise improper manner in or about the Airport. The Aviation Department shall be the sole judge on the question as to whether the conduct of Concessionaire's representatives is objectionable, and if so judged, Concessionaire shall take all steps necessary to ensure that such conduct does not occur. Concessionaire shall maintain a friendly and cooperative relationship with other tenants on the Airport, and shall not engage in open or public disputes, disagreements, or conflicts, tending to deteriorate the quality of the services offered at the Airport, or be incompatible to the best interest of the public or the Airport.

8.12 Concessionaire and any Subcontractors shall not engage in soliciting business from any area of the Airport, including any area in or in front of the Assigned Areas, other than the normal conduct of business specifically allowed in this Agreement.

8.13 No other type or kind of business, except that provided herein, shall be conducted at the Airport, including the Assigned Areas, by Concessionaire or any Subcontractor.

8.14 Concessionaire shall operate and maintain a standard of service and quality at least equal to the high standard of service provided at comparable international airports, while at the same time operating in a commercially reasonable and legally required manner. County's determination as to quality of service that is required shall be conclusive and shall be accepted and performed by Concessionaire.

8.15 Concessionaire shall inform each of its employees and Subcontractors of the pertinent rules and regulations of the Airport and the applicable provisions of this Agreement, and instruct such employees and Subcontractors as to the methods and procedures used at the Airport. Concessionaire shall not discriminate against any person or group of persons in any manner prohibited by Applicable Law.

8.16 Upon request by the Aviation Department, Concessionaire shall provide the Aviation Department with emergency evacuation and hurricane plans consistent with County's plans for the Airport. These plans shall include detailed procedures of actions to be taken by Concessionaire if an evacuation is needed or hurricane alert warning has been declared. Hurricane plans must be annually updated by Concessionaire if requested by the Aviation Department.

8.17 Concessionaire shall assume all financial responsibility for dishonored credit cards, fraudulent calls, and loss of funds or non-collected funds in connection with the operation of the Concession. None of the foregoing costs shall permit or entitle Concessionaire to any deductions from or credits against the Privilege Fees or Advertising Fees payable to County.

8.18 The Aviation Department may conduct or have conducted regular performance audits to evaluate Concessionaire's performance on operating standards, including but not limited to cleanliness, in-stock condition, and signage. Performance below minimum standards, as determined by the Aviation Department in its sole discretion, will subject Concessionaire to the imposition of Disincentive Fees (hereinafter defined).

8.19 The following table sets forth a schedule of disincentive fees ("Disincentive Fees") for violations of operating standards or failure to adhere to the contractual requirements of this Agreement. The Aviation Department shall provide written notice of any violation to Concessionaire. If the violation requires the payment of a Disincentive Fee, said fee shall be paid by Concessionaire within ten (10) calendar days after receipt of the written notice of the violation. Each infraction in a given category is considered a violation, and a subsequent infraction within that same category at any point during the Term is considered a further (e.g., second, third) violation. Concessionaire acknowledges and agrees that the damages that would be incurred by County upon Concessionaire's violations of the operating standards set forth herein and/or failure to otherwise adhere to the contractual requirements of this Agreement are difficult to quantify and not readily ascertainable. Concessionaire acknowledges and agrees that the Disincentive Fees are fair and reasonable. Concessionaire waives any and all challenges and legal defenses to the validity of any Disincentive Fee or the amount thereof, including that the Disincentive Fees are void as penalties. The imposition of a Disincentive Fee shall not operate to limit or otherwise affect County's rights under this Agreement, or at law or in equity, for

Concessionaire’s breach of this Agreement, or County’s damages for any breach except for those enumerated below.

<u>Infraction</u>	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd (or further) Violation</u>
Failure to repair and/or maintain Carts or CMUs in “like new” condition	Written Warning	\$250/incident	\$500/incident
Failure to comply with any reporting requirements in this Agreement	Written Warning	\$250/incident	\$500/incident
Failure to display proper pricing tags and/or identifiers	Written Warning	\$100/incident	\$250/incident
Failure to adhere to signage requirements on CMUs	Written Warning	\$100/incident	\$250/incident
A CMU is out of carts for a four (4)-hour or longer period (unless the CMU is out of service)	Written Warning	\$100/incident	\$250/incident
Prices charged are different from those displayed on signs	Written Warning	\$250/incident	\$500/incident
Failure to timely respond to a customer complaint	Written Warning	\$250/incident	\$500/incident
Failure to submit quarterly payment report as required by Section 16.5.	Written Warning	\$250/day	\$500/day
Use of any space at the Airport not included in <b>Exhibit A</b> , or which has not been approved in writing by the Aviation Department	Written Warning	\$100/day	\$200/day
Failure to timely remove Advertisements not approved by the Aviation Department	Written Warning	\$50/day per Advertisement (following 24 hours of written notice)	\$250/day per Advertisement (following 24 hours of written notice)

#### **ARTICLE 9. MAINTENANCE**

9.1 Concessionaire is responsible for all maintenance and repairs, of any nature, to the Assigned Areas except the following: cleaning of exterior unit Terminal windows; structural repairs to the roof, floor, and exterior walls and windows of the Terminals; and all HVAC supply mains and electrical power supply stubbed up to the Assigned Areas.

9.2 County shall not be liable to Concessionaire or any Subcontractors for any damage to merchandise, trade fixtures, Personalty, or personal property of Concessionaire or any Subcontractors in the Assigned Areas caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment. Further, County shall not be liable to

Concessionaire or any Subcontractors for any damage to persons or property of any kind caused by any other damage or disrepair to the structural or permanent portions of any Assigned Area or the Terminals, unless (i) County had reasonable opportunity to perform repairs after being notified in writing of the need for same by Concessionaire, and (ii) any such damage or disrepair shall not have been due to any action or negligence of Concessionaire or any Subcontractors.

9.3 Concessionaire shall provide at its own expense such janitorial, toilet, and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Assigned Areas. Concessionaire shall keep and maintain the interior of its Assigned Areas in a clean, neat, and sanitary condition, and attractive in appearance, at its sole cost and expense. County shall determine, in its sole discretion, the quality and sufficiency of the maintenance.

9.4 Concessionaire shall maintain and make necessary repairs, structural or otherwise, to the interior of its Assigned Areas and the fixtures and equipment therein and appurtenances thereto, including, without limitation, the interior windows, doors and entrances, both interior and exterior of storefronts, signs, show cases, floor covering, interior walls, and ceiling, the interior surface, the surfaces of interior columns exclusive of structural deficiencies, any columns erected by Concessionaire, and partitions and lighting within the Assigned Areas and serving Concessionaire. This maintenance shall be such that the original theme will be maintained in accordance with the approved plans for the Assigned Areas.

9.5 Concessionaire shall keep and maintain in good condition, at its sole cost, all service lines and electrical equipment and fixtures located at or in the Assigned Areas, all parts and components of all Carts and CMUs, and any other Improvements to or located at or in the Assigned Areas that were installed by or at the direction of Concessionaire. Concessionaire shall ensure that all repairs and maintenance are performed promptly and when necessary.

9.6 All repairs done by Concessionaire, or on its behalf, shall be of first-class quality in both materials and workmanship. All repairs will be made in conformity with the rules and regulations prescribed from time to time by federal, state, and local authorities having jurisdiction over the work.

9.7 County, its employees, and its representatives, shall have the right to enter Concessionaire's Assigned Areas to:

9.7.1 Inspect the Assigned Areas during Concessionaire's regular business hours or at any time in case of emergency to determine whether Concessionaire has complied with and is complying with the terms and conditions of this Agreement and other health and/or operational standards;

9.7.2 Perform any and all things that Concessionaire is obligated to perform and has failed after reasonable notice to perform, including, but not limited to, maintenance, repairs, and replacements to Concessionaire's Assigned Areas or lack of immediate reaction to emergency conditions. The cost of all labor and materials required to complete such work will be paid by Concessionaire to County within ten (10) calendar

days following demand for said payment at County's standard rates, plus any overhead; and/or

9.7.3 Exercise County's police power.

In addition to the foregoing, in the event of an emergency condition at the Airport, the representatives of County shall have the right to enter Concessionaire's Assigned Areas to perform maintenance, repair, and/or replacement. The cost of all labor and materials required to complete the emergency work will be paid by Concessionaire to County within thirty (30) calendar days following demand for said payment at County's standard rates, plus any overhead.

9.8 Concessionaire will provide for the timely and proper handling and removal of all trash, garbage, and other refuse resulting from Concessionaire's operations. Concessionaire shall arrange for trash removal directly with a company authorized by the Aviation Department to provide such service at the Airport. Concessionaire shall provide and use suitable covered receptacles for all garbage, trash, and other refuse in its Assigned Areas. Piling of boxes, cartons, barrels, or similar items shall not be permitted in a public area. Concessionaire shall maintain the Assigned Areas in a neat, orderly, and clean condition, and there shall be no food, papers, or rubbish visible at any time. Concessionaire shall take all reasonable measures to reduce the amount of waste it generates by requiring, if possible, suppliers to remove nonessential over wrap, containers, and packaging, and to use recyclable materials for essential packaging whenever possible.

9.9 Concessionaire shall provide adequate control of rodents, insects, and other pests in its Assigned Areas. In the event that Concessionaire's rodent, insect, and pest control program is not acceptable or sufficient, the Aviation Department may seek to control such rodents, insects, and pests by other means. Concessionaire agrees to reimburse County no later than ten (10) calendar days following demand for any expenses incurred by County due to conditions within Concessionaire's Assigned Areas.

## **ARTICLE 10. COMPLIANCE**

10.1 Concessionaire, any Subcontractors, and any other person whom Concessionaire controls, or has the right to control, and all employees of any of the foregoing, shall comply with all Applicable Law.

10.2 Concessionaire shall be solely responsible for the payment of all of its employees' wages and benefits and shall comply with all Applicable Law, including, but not limited to, the payment of workers' compensation, unemployment insurance, Social Security, and any other mandated or option employee benefits. Concessionaire shall pay wages that are not less than the minimum wages required by federal and state statutes and local ordinances, to persons employed in its operations hereunder.

10.3 Living Wage Requirement. If Concessionaire is a "covered employer" within the meaning of the "Broward County Living Wage Ordinance," Sections 26-100 through 26-105 of the Code,

Concessionaire shall fully comply with the requirements of such ordinance and shall pay to all of its employees providing “covered services,” as defined in the ordinance, a living wage as defined therein. Concessionaire shall ensure all Subcontractors that qualify as “covered employers” fully comply with the requirements of such ordinance.

10.4 Concessionaire shall, at its own expense, provide and maintain in full force and effect any and all federal, state, county, and municipal certificates, licenses, and permits required for the operation of all aspects of Concessionaire’s business.

10.5 Concessionaire agrees to permit entry, inspection, and testing of all Assigned Areas 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 Airport or the operations of Concessionaire. This right of entry, inspection, and testing shall impose no duty on County to take any such action and shall impart no liability on County should it not take any such action.

#### **ARTICLE 11. INDEMNIFICATION; INSURANCE; BONDS; SECURITY DEPOSIT**

11.1 Concessionaire shall indemnify, hold harmless, and defend County and all of County’s current, past, and future officers, agents, 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, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any breach of this Agreement by Concessionaire, or any intentional, reckless, or negligent act or omission of Concessionaire, its officers, employees, Subcontractors, or agents, arising from, relating to, or in connection with this Agreement (collectively, a “Claim”). If any Claim is brought against an Indemnified Party, Concessionaire shall, upon written notice from County, defend each Indemnified Party with 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. If considered necessary by the Aviation Department and the County Attorney, any sums due Concessionaire under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

11.2 Throughout the Term, Concessionaire shall, at its sole expense, maintain the minimum insurance coverages stated in **Exhibit F** in accordance with the terms and conditions of this article. Concessionaire shall maintain insurance coverage against claims relating to any act or omission by Concessionaire, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

11.3 Concessionaire shall ensure that “Broward County” is listed and endorsed as an additional insured as stated in **Exhibit F** on all policies required under this article.

11.4 On or before the Effective Date or at least fifteen (15) days prior to the Commencement Date, as may be requested by County, Concessionaire shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Concessionaire shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

11.5 Concessionaire shall ensure that all insurance coverages required by this article remain in full force and effect without any lapse in coverage throughout the Term and until all performance required of Concessionaire has been completed, as determined by Contract Administrator. Concessionaire or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

11.6 All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

11.7 If Concessionaire maintains broader coverage or higher limits than the insurance requirements stated in **Exhibit F**, County shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any County insurance, self-insurance, or otherwise, which shall be in excess of and shall not contribute to the required insurance provided by Concessionaire.

11.8 Concessionaire shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in **Exhibit F** and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Concessionaire shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Concessionaire to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Concessionaire shall obtain same in endorsements to the required policies.

11.9 Unless prohibited by the applicable policy, Concessionaire waives any right to subrogation that any of Concessionaire's insurers may acquire against County, and shall obtain same in an endorsement of Concessionaire's insurance policies.

11.10 Concessionaire shall require that each Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same insurance terms and conditions required of Concessionaire under this article. Concessionaire shall ensure that all such Subcontractors comply with these requirements and that "Broward

County” is named as an additional insured under the Subcontractors’ applicable insurance policies. Concessionaire shall not permit any Subcontractor to provide Services unless and until all applicable requirements of this article are satisfied.

11.11 If Concessionaire or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Concessionaire. If requested by County, Concessionaire shall provide, within one (1) business day, evidence of each Subcontractor’s compliance with this article.

11.12 If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in **Exhibit F**; and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date, Concessionaire must obtain and maintain “extended reporting” coverage that applies after termination or expiration of the Agreement for at least the duration stated in **Exhibit F**.

11.13 Concessionaire shall post a security deposit (“Security Deposit”) with County during the Term of this Agreement in the amount of Fifty Thousand Dollars (\$50,000.00). The Security Deposit shall be revised yearly to an amount equal to one-half (1/2) of the total amount of all fees and charges paid to the Aviation Department by Concessionaire over the previous Contract Year. The Security Deposit shall serve as security for the payment of all monies due to County, and shall also secure the performance of all obligations of Concessionaire to County. The Security Deposit shall be either in the form of cash, an irrevocable letter of credit (“Letter of Credit”) in form and substance satisfactory to County, or a Payment and Performance Bond (“Payment and Performance Bond”), in form and substance satisfactory to County. No interest shall be paid on said Security Deposit. The Security Deposit shall be submitted to County simultaneously with the execution of this Agreement by Concessionaire. In the event of any failure by Concessionaire to pay when due any fees or other charges hereunder or upon any other failure to perform its obligations hereunder or upon any other default hereunder, then in addition to any other rights and remedies available to County at law or in equity, County shall be entitled to draw down up to the full amount of the Security Deposit and apply same to all amounts owed by Concessionaire to County. Upon notice of any such draw, Concessionaire shall immediately replace the Security Deposit with a new Letter of Credit or Payment and Performance Bond or cash in the full amount of the Security Deposit required hereunder. The Aviation Department, upon fourteen (14) days’ notice to Concessionaire, may require an increase in the amount of the Security Deposit to reflect any increases in the monies payable hereunder. In addition, the Aviation Department, upon fourteen (14) days’ notice to Concessionaire, may require an increase in the amount of the Security Deposit equal to up to four (4) additional months of Privilege Fees because of increased obligations hereunder, or if upon a review of Concessionaire’s payment or performance history at the Airport, the Aviation Department determines an increase should be required.

11.13.1 The Security Deposit shall be kept in full force and effect throughout the Term of this Agreement and for a period of six (6) months thereafter. Not less than one hundred twenty (120) days prior to any expiration date of a Letter of Credit or Payment or Performance Bond, Concessionaire shall submit evidence in form satisfactory to County that said security instrument has been renewed. A failure to renew a Letter of Credit or Payment or Performance Bond, or to increase the amount of the Security Deposit, if required pursuant hereto, shall (i) entitle County to draw down the full amount of such Security Deposit, and (ii) be a default of this Agreement entitling County to all available remedies. The Security Deposit shall not be returned to Concessionaire until all obligations under this Agreement are performed and satisfied.

11.13.2 Each Letter of Credit provided hereunder or under any other article, section, or provision of this Agreement shall be provided by a financial institution of recognized standing authorized to do business in the State of Florida. The financial institution that has issued the Letter of Credit must have been in business with a record of successful continuous operation for at least the immediately preceding five (5) years. Each Letter of Credit shall be in form and substance satisfactory to County.

11.13.3 Each bond provided hereunder or under any other article, section, or provision of this Agreement shall be executed by a surety company of recognized standing and having been in business with a record of successful continuous operation for at least five (5) years. Each bond shall be in form and substance satisfactory to County. Furthermore, such surety company must have at least an "A-" minimum rating in the latest revision of Best's Insurance Report.

11.14 In addition to the Security Deposit, Concessionaire, before commencing any construction or refurbishment in its Assigned Area, shall satisfy the requirements in Section 5.10 of this Agreement.

11.15 The provisions of this article shall survive the expiration or earlier termination of this Agreement.

## **ARTICLE 12. DEFAULT BY CONCESSIONAIRE**

12.1 If any one or more of the following events shall occur, same shall be an event of default under this Agreement. In addition to all other remedies available to County, this Agreement, at the option of County, shall be subject to immediate termination should any one or more of the following events of default occur:

12.1.1 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 shall take possession or control of all or substantially all of the property of Concessionaire, and such possession or control shall continue in effect for a period of thirty (30) days;

12.1.2 Any lien, claim, or other encumbrance that is filed against any of the Assigned Areas is not removed, or if County is not adequately secured by bond or otherwise, within thirty (30) days after Concessionaire has received notice thereof;

12.1.3 Concessionaire fails to pay any Privilege Fees or Advertising Fees when due as required hereunder within ten (10) days after written notice thereof;

12.1.4 Concessionaire fails to pay any other monetary obligation required hereunder within ten (10) days after written notice thereof;

12.1.5 Concessionaire fails to maintain or meet any insurance obligation including but not limited to the types of coverages and in the amounts as specified in this Agreement and fails to cure same within two (2) business days after written notice thereof;

12.1.6 Concessionaire fails to obtain the prior written consent of County prior to any assignment;

12.1.7 Concessionaire fails to keep, perform, and observe each and every other non-monetary promise, covenant, and provision set forth in this Agreement on its part to be kept, performed, or observed within 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 Concessionaire 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;

12.1.8 Concessionaire voluntarily abandons, deserts, or vacates any of the Assigned Areas, or discontinues its operation at the Airport for a period of two (2) consecutive days, unless said abandonment is the result of a cause beyond control of Concessionaire;

12.1.9 Concessionaire purposefully misstates or inaccurately reports sales or revenues from its operation, including reporting estimated sales; or

12.1.10 Concessionaire fails to maintain or renew any Security Deposit or bond required hereunder.

12.2 Following the occurrence of any event set forth above, or at any time thereafter, County may terminate this Agreement and all rights of Concessionaire hereunder by giving written notice to Concessionaire, and/or County may exercise any other remedies available to County under this Agreement or at law or in equity. The termination shall be effective on the date specified in such notice. In the event of any such termination, Concessionaire shall immediately quit and surrender the Assigned Areas to County pursuant to the provisions of this Agreement and shall cease operations at the Airport. Any such termination shall be without prejudice to any remedy for arrears of payments due hereunder, breach of covenant, or damages for the balance of all fees payable hereunder through the full Term of this Agreement, or any other damages or

remedies whatsoever, including without limitation, all direct, indirect, consequential, and all other damages whatsoever. Upon any termination pursuant to this article, Concessionaire shall have no right to any reimbursements from County.

12.3 Upon expiration or early termination of this Agreement, including any termination of this Agreement upon the occurrence of an event of default hereunder, Concessionaire shall have no further rights hereunder and Concessionaire and any Subcontractors shall immediately cease all operations and shall vacate and peaceably surrender the Assigned Areas to County in accordance with the terms and conditions set forth in this article and shall pay in full the balance of all Privilege Fees, Advertising Fees, and other charges as set forth in the Agreement for the full Term hereof. In the event of termination upon the occurrence of an event of default hereunder, Concessionaire's Security Deposit may be applied by County to any sums due to County under this Agreement.

12.4 Upon termination of this Agreement, County shall have the right to engage another concessionaire to provide the services Concessionaire is authorized to provide hereunder for such period or periods (which may extend beyond the Term of this Agreement) and at such fees and upon such other terms and conditions as County may, in good faith, deem advisable. County shall not be liable and Concessionaire's liability shall not be affected or diminished in any way whatsoever by the failure of County to obtain another concessionaire or by the failure of County to collect any fees or other sums due from any such other concessionaire.

12.5 If proceedings shall, at any time, be commenced against Concessionaire by County under this Agreement, and compromise or settlement shall be affected either before or after judgment whereby Concessionaire shall be permitted to continue to operate under this Agreement, then such proceedings shall not constitute a waiver of any condition or agreement contained herein or of any subsequent event of default.

12.6 Any amount paid or expense or liability incurred by County for the account of Concessionaire shall, at the option of County, be deemed to be additional Privilege Fees due hereunder, and the same may, at the option of County, be added to any Privilege Fees then due or thereafter falling due hereunder.

12.7 Concessionaire hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of any termination of this Agreement. The rights given to County herein are in addition to any rights that may be given to County by statute or otherwise.

12.8 Notwithstanding the foregoing, in the event that Concessionaire has frequently, regularly, or repetitively defaulted in the performance of or breached any of the terms, covenants, and conditions required herein to be kept and performed by Concessionaire, and regardless of whether Concessionaire has cured each individual condition of breach or default, Concessionaire may be determined by the Aviation Department to be a "habitual violator." At the time that such determination is made, the Aviation Department shall issue to Concessionaire a written notice advising of such determination and citing the circumstances. Such notice shall also advise

Concessionaire that there shall be no further notice or grace 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 cumulative 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, County may terminate this Agreement upon the giving of written notice of termination to Concessionaire, such termination to be effective upon delivery of the notice to Concessionaire.

### **ARTICLE 13. SURRENDER**

13.1 Surrender to County. Upon the expiration or early termination of this Agreement, Concessionaire shall vacate, surrender, and deliver peaceably and promptly to County the possession of the Assigned Areas. Concessionaire shall ensure that the Assigned Areas are, on the date they are surrendered and delivered to County, (a) in good working order and repair, (b) in the condition required by Article 9 of this Agreement, and (c) in a condition that complies with all Applicable Law. All maintenance and repairs to the Assigned Areas shall be completed before surrender. Concessionaire shall cause all occupants, legal or otherwise, to vacate the Assigned Areas, pay in full all fees and other amounts payable to County that are then due and owing, and remove all Personalty before surrender and delivery. Upon surrender and delivery, Concessionaire shall deliver to County all keys, locks, alarm codes, and security codes for the Assigned Areas and return all Airport Issued Identification Media as required by the Airport Security Requirements set forth in **Exhibit H**. Concessionaire shall, at its sole expense, take all actions that are required to remove from the Assigned Areas any and all hazardous substances or other Materials (hereinafter defined), whether stored in drums or found in vats, containers, distribution pipelines, or the like, or discharged into the ground. All such substances and Materials (hereinafter defined) shall be removed by Concessionaire in a manner that complies with Article 15 and Applicable Law.

It is agreed and understood that any holding over by Concessionaire after the expiration or earlier termination of this Agreement shall not renew and extend same, and shall be construed as a tenancy at sufferance. Concessionaire 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 fees or any other payments by County in the event that Concessionaire fails or refuses to surrender possession shall not operate or give Concessionaire 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. At the sole option of County, upon written notice to Concessionaire by the Aviation Department, Concessionaire shall be required to pay to County during any holdover period monthly fees, which shall be equal to double the amount of the monthly Privilege Fee due and payable to County for the month immediately preceding the date of termination of this Agreement or expiration of the Term. If County exercises this option, a tenancy at will lasting from month to month shall be created, and such tenancy shall be subject to all other provisions contained in this Agreement.

13.2 County Not Obligated to Accept Surrender. In the event Concessionaire fails to surrender and deliver the Assigned Areas 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 Concessionaire's surrender and delivery of the Assigned Areas until same have been satisfied and Concessionaire shall be considered to be holding over and subject to the provisions of Section 13.1. During the period of time from the termination date of this Agreement and until County is satisfied, in its sole discretion, with Concessionaire's surrender and delivery of the Assigned Areas, Concessionaire shall be deemed a holdover concessionaire.

13.3 Final Walkthrough. Prior to County's acceptance of surrender, a final exit walkthrough inspection shall be conducted by Concessionaire and the Aviation Department to determine compliance with this article and the Aviation Department's acceptance of the condition of the Assigned Areas. In the event Concessionaire fails to comply with the terms of this article, County reserves the right to perform all necessary work to bring the Assigned Areas to their original condition prior to Concessionaire's occupancy, normal wear and tear excepted, and Concessionaire shall reimburse County for all expenses incurred within fifteen (15) days after written demand from County.

13.4 Acceptance of Surrender of Premises. No agreement of surrender or an acceptance of surrender of the Assigned Areas is valid unless and until it has been reduced to writing and signed by County's and Concessionaire's duly authorized representatives.

13.5 On or before the expiration or earlier termination of this Agreement, or such other date as approved in writing by the Aviation Department, Concessionaire shall remove all of its Personalty from the Assigned Areas.

13.5.1 Any Personalty that is not removed from the Assigned Areas on the date the Assigned Areas are surrendered and delivered to County or upon expiration or earlier termination of this Agreement, or such other date as approved in writing by the Aviation Department, shall be deemed abandoned by Concessionaire and County may thereupon take possession, retain, convey, destroy, or dispose of such Personalty in County's sole and absolute discretion, without any accounting or liability to County. If County incurs any expenses in any way related to taking possession, retaining, conveying, destroying, or disposing of such Personalty, Concessionaire shall pay County the amount of the expenses incurred within fifteen (15) days after written demand from County.

13.5.2 Alternatively, in County's sole option, if Concessionaire shall fail to remove its Personalty by the expiration or earlier termination of this Agreement or as otherwise required herein, Concessionaire may be considered to be a holdover concessionaire subject the provisions of Section 13.1.

13.6 The provisions of this article shall survive the expiration or termination of this Agreement.

#### **ARTICLE 14. FIRE AND OTHER DAMAGE**

14.1 In the event that structural or permanent portions of the Assigned Areas shall be partially damaged by fire or other casualty, Concessionaire shall give immediate notice thereof to County, and the same shall be repaired at the expense of County without unreasonable delay unless County determines that the damage is so extensive that the repair or rebuilding is not feasible.

14.2 County's obligations to rebuild or repair under this article shall be limited to restoring only the structural or permanent portions of the building in which the Assigned Areas are located to substantially the condition that existed prior to the casualty, and shall further be limited to the extent of the insurance proceeds available to County for such restoration. Concessionaire agrees that if County elects to repair or rebuild as provided in this article, then Concessionaire will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its signs, fixtures, furnishings, equipment, Improvements, and other items provided or installed by Concessionaire, in or about the Assigned Area in a manner and to a condition at least equal to that which existed prior to its damage or destruction.

14.3 In the event of damage to the Assigned Areas by fire or other casualty and such damage is caused by the act or omission to act by Concessionaire or any of its Subcontractors, Concessionaire's payments due to County pursuant to this Agreement shall not abate and Concessionaire shall be responsible, at its expense, for making all the necessary repairs as approved by the Aviation Department. If Concessionaire fails to make the necessary repairs in a timely manner as determined by the Aviation Department, then Aviation Department may, at its option, cause such repairs to be completed and Concessionaire shall reimburse the Aviation Department for the costs and expenses incurred in such repair, plus an administrative fee as permissible under Broward County Administrative Code.

#### **ARTICLE 15. ENVIRONMENTAL COMPLIANCE, ENVIRONMENTAL CONTAINMENT, AND REMOVAL**

15.1 Concessionaire shall provide the Aviation Department, if requested at any time, with a list of all pollutants, contaminants, petroleum products, hydrocarbon contamination, hazardous substances, hazardous materials, or other materials regulated pursuant to Environmental Law or other Applicable Law ("Materials") that are stored, used, generated, or disposed of on Airport property by Concessionaire or any Subcontractors.

15.2 Concessionaire shall comply with Environmental Law or other Applicable Law covering the Airport, including, without limitation, those addressing the following:

15.2.1 Proper 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;

15.2.2 Proper use, disposal, and treatment of storm water runoff, including the construction and installation of adequate pre-treatment devices or mechanisms, if applicable;

15.2.3 Adequate inspection, licensing, insurance, and registration of existing and 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 leak detection systems;

15.2.4 Adequate facilities for management and, as necessary, pretreatment of industrial waste, industrial wastewater, and regulated Materials and the proper disposal thereof; and

15.2.5 Compliance with reporting requirements of Title III of the Superfund Amendment and Chapter 27 of the Code, as applicable and as amended from time to time.

15.3 The release of any Materials on Airport or at the Assigned Areas by Concessionaire or any Subcontractors or as a result of Concessionaire's operations at the Airport in an amount that is in violation of Environmental Law or other Applicable Law, whether committed prior to or subsequent to the date of execution of this Agreement, shall be remedied at Concessionaire's expense and, upon demand of County or any of its agencies or any local, state, or federal regulatory agency, immediately contained or removed to meet the requirements of Environmental Law or other Applicable Law. If Concessionaire does not take action immediately to have such Materials contained, removed, and abated, County or any of its agencies may, upon reasonable notice to Concessionaire (which notice shall be written unless an emergency condition exists), undertake the removal of the Materials; however, any such action by County or any of its agencies shall not relieve Concessionaire of its obligations under this or any other provision of this Agreement or as imposed by law. No action taken by either Concessionaire or County to contain or remove Materials, or to abate a release, whether such action is taken voluntarily or not, shall be construed as an admission of liability as to the source of or the person who caused the pollution or its release. As used in this Agreement, "Concessionaire's operations" and "Concessionaire's actions" and words of similar import shall include all actions and inaction by Concessionaire or any Subcontractors.

15.4 Concessionaire shall provide the Aviation Department with notice of release of Materials occurring on account of Concessionaire's operations at the Airport in accordance with the requirements of the Aviation Department's policies and procedures manual. Concessionaire shall maintain a log of all such notices to the Aviation Department and shall also maintain all records required by all applicable laws and regulations and also such records as are reasonably necessary to adequately assess environmental compliance in accordance with all applicable laws and regulations.

15.5 As required by Environmental Law or other Applicable Law, Concessionaire shall provide the federal, state, County, and local regulatory agencies with notice of spills, release, leaks, or discharges (collectively, "release") of Materials on the Airport property which exceeds an amount

required to be reported to any local, County, state, or federal regulatory agency under Environmental Law or other Applicable Law, which notice shall be in accordance with Environmental Law or other Applicable Law. Concessionaire shall further provide the Aviation Department and County Environmental Protection and Growth Management Department (or successor agency) with written notice within one (1) day following commencement of same, of the curative measures, remediation efforts, and/or monitoring activities to be affected. Concessionaire shall have an updated contingency plan in effect relating to such release, which provides minimum standards and procedures for storage of regulated Materials, prevention and containment of spills and release, and transfer and disposal of regulated Materials. The contingency plan shall describe design features, response actions, and procedures to be followed in case of release or other accidents involving hazardous Materials, biohazardous Materials, or petroleum products or other Materials. Concessionaire agrees to permit entry of any Assigned Areas it occupies at the Airport at all reasonable times by inspectors of County Department of Environmental Protection and Growth Management or successor agency and of other regulatory authorities with jurisdiction.

15.6 The Aviation Department, upon reasonable written notice to Concessionaire, shall have the right to inspect all documents relating to the environmental condition of the Assigned Areas used by Concessionaire at the Airport, including without limitation, the release of any Materials, or any curative, remediation, or monitoring efforts, and any documents required to be maintained under Environmental Law or other Applicable Law or any development order issued to County, including, but not limited to, manifests evidencing proper transportation and disposal of Materials, environmental site assessments, and sampling and test results. Concessionaire agrees to allow inspection of the Assigned Areas, by appropriate federal, state, County, and local agency personnel in accordance with Environmental Law or other Applicable Law and as required by any development order issued to County.

15.7 If County arranges for the removal of any Materials at the Airport that were released by Concessionaire or any Subcontractors, all costs of such removal incurred by County shall be paid by Concessionaire to County within ten (10) calendar days after County's written demand, with interest at the rate of eighteen percent (18%) per annum thereafter accruing.

15.8 Nothing herein shall relieve Concessionaire of its general duty to cooperate with County in ascertaining the source and containing, removing, and abating any Materials at the Airport. The Aviation Department and its employees, contractors, and agents, upon reasonable written notice to Concessionaire, and the federal, state, local, and other County agencies, and their employees, contractors, and agents, at times in accordance with all applicable laws and regulations, shall have the right to enter any Assigned Areas used by Concessionaire at the Airport for the purposes of the foregoing activities and conducting such environmental assessments (testing or sampling), inspections, and audits as it deems appropriate.

15.9 The provisions of this article shall survive the expiration or other termination of this Agreement.

## ARTICLE 16. EQUAL EMPLOYMENT OPPORTUNITY AND ACDBE COMPLIANCE

16.1 Concessionaire and Subcontractors shall not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, pregnancy, or any other basis prohibited by Applicable Law in the performance of this Agreement. Concessionaire shall include the foregoing or similar language in its contracts with all Subcontractors, except that any project assisted by U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

16.2 Airport Concession Disadvantaged Business Enterprise. The ACDBE regulations establish requirements for setting an overall goal for ACDBE participation in all concession activities. This rule requires recipients of federal funds to use a methodology based on demonstrable data of relevant market conditions and is designed to reach a goal the recipient would expect ACDBEs to achieve in the absence of discrimination.

16.3 Contract Assurances. If the following clauses conflict with any other term or provision of this contract, the clauses set forth in this section shall control. Concessionaire or Contractor shall include the clauses stated below in all subsequent agreements or contracts covered by 49 C.F.R. Part 23 that it enters and shall cause those businesses to similarly include the statements in their agreements.

16.3.1 This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R. Part 23. The Concessionaire or Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23. The Concessionaire or Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

16.3.2 Nondiscrimination/Remedies. Concessionaire, Contractor, sub-concessionaire, or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Concessionaire or Contractor shall carry out applicable requirements of 49 C.F.R. Part 23 in the award and administration of DOT-assisted contracts. Failure by Concessionaire or Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or

(4) Disqualifying Concessionaire or Contractor from bidding as non-responsible.

16.4 Contract Compliance Monitoring. Compliance monitoring shall be conducted to determine if Concessionaire or Contractor and Subcontractors are complying with the requirements of the ACDBE program. Failure of Concessionaire or Contractor to comply with this section may result in County imposing penalties or sanctions pursuant to the provisions of 49 C.F.R. Parts 23 and 26 and County's ACDBE program plan. OESBD shall have the authority to audit and monitor all contracts, leases, joint venture agreements, and other documents related to County projects. The requirements of the ACDBE program are applicable to Concessionaire or Contractor and its Subcontractors. Concessionaire or Contractor shall be responsible for ensuring proper documentation with regard to its utilization and payment of ACDBEs and non-ACDBEs.

16.5 Within twenty (20) days after the end of each calendar quarter, Concessionaire or Contractor shall submit a report detailing all Subcontractor or sub-concessionaire payments and participation for the previous calendar quarter, utilizing Broward County's Business Management System (BMS), [broward.gob2g.com](http://broward.gob2g.com). For questions regarding BMS user access or BMS Trainings, please contact OESBD at [BMSCompliance@broward.org](mailto:BMSCompliance@broward.org), [SBCOMP@broward.org](mailto:SBCOMP@broward.org) or (954) 357-6400.

16.6 Upon request by County, Concessionaire or Contractor shall make available a copy of all ACDBE subcontracts. Concessionaire or Contractor shall require in its contracts with all Subcontractors or agreements with ACDBEs to supply labor or materials that the subcontract, and all lower tier subcontracts issued thereunder, be performed in accordance with this 49 C.F.R. Part 23.

16.7 If Concessionaire or Contractor fails to comply with the requirements in this section, County shall have the right to exercise any right or remedy provided in this contract or under Applicable Law, with all such rights and remedies being cumulative.

16.8 Prompt Payment. Concessionaire or Contractor shall pay its Subcontractors and suppliers for satisfactory performance of their contracts within fifteen (15) days after receipt of each payment from County for such subcontracted work or supplies.

16.8.1 If Concessionaire or Contractor withholds an amount as retainage from Subcontractors or suppliers, Concessionaire or Contractor shall release such retainage and pay same within fifteen (15) days after receipt of payment of retained amounts from County. Failure to pay a Subcontractor or supplier in accordance with this subsection shall be a material breach of this contract, unless Concessionaire or Contractor demonstrates to the Contract Administrator's satisfaction that such failure to pay results from a bona fide dispute with the Subcontractor or supplier and, further, that Concessionaire or Contractor promptly pays the applicable amount(s) to the Subcontractor or supplier upon resolution of the dispute.

16.8.2 If applicable, the Contract Administrator may increase allowable retainage or withhold progress payments if Concessionaire or Contractor fails to demonstrate timely payments of sums due to Subcontractors and suppliers. The presence of a “pay when paid” provision in a Concessionaire or Contractor’s contract with an ACDBE firm shall not preclude County or its representatives from inquiring into claims of nonpayment.

## **ARTICLE 17. REPRESENTATIONS AND WARRANTIES**

17.1 Representation of Authority. Concessionaire represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Concessionaire, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Concessionaire has with any third party or violates Applicable Law. Concessionaire further represents and warrants that execution of this Agreement is within Concessionaire’s legal powers, and each individual executing this Agreement on behalf of Concessionaire is duly authorized by all necessary and appropriate action to do so on behalf of Concessionaire and does so with full legal authority.

17.2 Solicitation Representations. Concessionaire represents and warrants that all statements and representations made in Concessionaire’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 date Concessionaire executes this Agreement, unless otherwise expressly disclosed in writing by Concessionaire.

17.3 Contingency Fee. Concessionaire represents and warrants that it has not employed or retained any person or entity, other than a bona fide employee working solely for Concessionaire, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Concessionaire, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

17.4 Truth-In-Negotiation Representation. Concessionaire’s compensation under this Agreement is based upon its representations to County, and Concessionaire certifies that the wage rates, factual unit costs, and other information supplied to substantiate Concessionaire’s compensation, including without limitation those made by Concessionaire during the negotiation of this Agreement, are accurate, complete, and current as of the date Concessionaire executes this Agreement. Concessionaire’s compensation may be reduced by County, in its sole discretion, to correct any inaccurate, incomplete, or noncurrent information provided to County as the basis for Concessionaire’s compensation in this Agreement.

17.5 Public Entity Crime Act. Concessionaire 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 statute. Concessionaire 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 Concessionaire has been placed on the convicted vendor list.

17.6 Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Concessionaire represents that it has not been placed on the “discriminatory vendor list” as provided in Section 287.134, Florida Statutes, and that it has not been identified as a company or other entity subject to scrutiny under Sections 215.473 or 215.4725, Florida Statutes. Concessionaire represents and certifies that it is not, and throughout the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Concessionaire represents that it is, and throughout the Term will remain, in compliance with Section 286.101, Florida Statutes.

17.7 Claims Against Concessionaire. Concessionaire represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Concessionaire, threatened against or affecting Concessionaire, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Concessionaire to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Concessionaire or on the ability of Concessionaire to conduct its business as presently conducted or as proposed or contemplated to be conducted.

17.8 Verification of Employment Eligibility. Concessionaire represents that Concessionaire and each Subcontractor have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Concessionaire violates this section, County may immediately terminate this Agreement for cause and Concessionaire shall be liable for all costs incurred by County due to the termination.

17.9 Warranty of Performance. Concessionaire represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all the services to be provided pursuant to this Agreement and that each person and entity that will provide such services is duly qualified and, to the extent required, licensed and certified by all appropriate governmental authorities to perform such services, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render the services to be provided pursuant to this Agreement. Concessionaire represents and warrants that the services to be provided pursuant to this Agreement shall be performed in a skillful and respectful manner, that it has or will obtain all necessary permits and approvals by applicable regulatory entities to perform the services to be provided pursuant to this Agreement unless otherwise expressly stated herein, and that the quality of all the services to be provided pursuant to this Agreement shall equal or exceed prevailing industry standards for the provision of such services.

17.10 Prohibited Telecommunications. Concessionaire represents and certifies that Concessionaire and all Subcontractors do not use, and throughout the Term will not provide or

use, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 C.F.R. §§ 52.204-24 through 52.204-26.

17.11 Criminal History Screening Practices. If this Agreement is subject to the requirements of Section 26-125(d) of the Code, Concessionaire represents and certifies that Concessionaire will comply with Section 26-125(d) of the Code throughout the Term.

17.12 Entities of Foreign Concern. The provisions of this section apply only if this Agreement provides access to an individual's personal identifying information. By execution of this Agreement, the undersigned authorized representative of Concessionaire hereby attests under penalty of perjury as follows: Concessionaire is not owned by the government of a foreign country of concern, is not organized under the laws of nor has its principal place of business in a foreign country of concern, and the government of a foreign country of concern does not have a controlling interest in Concessionaire; and the undersigned authorized representative of Concessionaire declares that they have read the foregoing statement and that the facts stated in it are true. Terms used in this section that are not otherwise defined in this Agreement shall have the meanings ascribed to such terms in Section 287.138, Florida Statutes.

17.13 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the "Broward County Domestic Partnership Act," Section 16½-157 of the Code (the "Domestic Partnership Act"), Concessionaire certifies and represents that it shall at all times comply with the provisions of the Act. The contract language referenced in the Domestic Partnership Act is deemed incorporated in this Agreement as though fully set forth in this section.

17.14 Ensuring Uninterrupted Service. The continuous availability and provision of the Concession required by this Agreement is important to the operations of the Airport. County therefore has a proprietary interest in ensuring that the Concession is not disrupted. Accordingly, Concessionaire shall take adequate measures to ensure that Concessionaire will be able to provide uninterrupted operation of the Concession during the Term of this Agreement in accordance with the standards and requirements of this Agreement. Such measures may include, but are not limited to, Concessionaire's commitment, to the extent permitted by law, to enter into a labor peace agreement with an applicable labor organization(s), which agreement prohibits the labor organization(s) and its members from picketing, work stoppages, boycotts, or other economic interference with the business of Concessionaire at the Airport.

17.15 No Set Off. Concessionaire acknowledges that, through the date hereof, it has no claims against County with respect to any of the operations of Concessionaire at the Airport, or any of the matters covered by this Agreement or any other agreement it may have with County, and it has no right of set off or counterclaims against any of the amounts payable by Concessionaire to County under this Agreement or any other agreement it may have with County.

17.16 Breach of Representations. Concessionaire acknowledges that County is materially relying on the representations, warranties, and certifications of Concessionaire stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such

representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to Concessionaire; (c) set off from any amounts due Concessionaire the full amount of any damage incurred; and (d) debarment of Concessionaire.

## **ARTICLE 18. GENERAL PROVISIONS**

**18.1 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.

**18.2 Cooperation with County.** Concessionaire acknowledges that County, from time to time, will be seeking regulatory approvals (collectively "Regulatory Approvals") in connection with Airport projects, which may include the following: (i) amendment of development agreements and orders; (ii) agreements with the state of Florida and other agencies; (iii) land use and zoning amendments; (iv) preparation of environmental assessments and environmental impact statements; (v) such permitting as may be required by federal, state, County, or local regulations; and (vi) any other Regulatory Approvals as may be required by any governmental authority having jurisdiction over the issuance of permits for the approval and implementation of Airport projects. Concessionaire agrees to cooperate with County in connection with County's efforts to obtain the Regulatory Approvals. From and after the date of execution of this Agreement, Concessionaire covenants and agrees to support County's efforts to obtain the Regulatory Approvals and to execute any documents or instruments reasonably requested by County in order to assist County in obtaining the Regulatory Approvals, provided that Concessionaire shall not be required to bear any expense in connection therewith and Concessionaire shall not be deemed an agent of County.

**18.3 Right to Amend.** In the event that the United States Government, the State of Florida, or any agency or department thereof, requires modifications in this Agreement as a condition

precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be required, and upon any failure of Concessionaire to agree to any such amendments, modifications, revisions, supplements, or deletions, County shall be entitled to terminate this Agreement upon thirty (30) days' notice to Concessionaire.

18.4 Police/Regulatory Powers. 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 Assigned Areas, any Improvements thereon, or any operations at the Assigned Areas, or at any other areas of the Airport. 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 herein shall be considered zoning by contract.

18.5 Right of Flight. County reserves unto itself, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Assigned Areas and the Terminals and other adjacent County property together with the right to cause in said 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 the said airspace, and for aircraft landing on, taking off from, or operating at the Airport.

18.6 Compliance with FAR Part 77. All Improvements, equipment, objects of natural growth, and other obstructions on the Assigned Areas or the Terminals or any County property shall be restricted to a height in order to comply with all applicable Federal Aviation Regulations, including but not limited to Part 77. Notwithstanding the foregoing, Concessionaire shall make no above grade Improvements.

18.7 No Hazards. Concessionaire expressly agrees, for itself, its successors and assigns, to prevent any use of the Assigned Areas, which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute a hazard.

18.8 No Exclusive Rights. Nothing herein contained shall be deemed to grant Concessionaire any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as codified in Title 49 U.S.C. Section 40103, et seq., for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Concessionaire shall have the right to

use the Assigned Areas pursuant to the provisions of this Agreement. It is expressly understood and agreed that the rights granted under this Agreement are nonexclusive.

18.9 Right to Develop. County reserves the right to further develop and improve County-owned property, as it sees fit, regardless of the desires or views of Concessionaire, and without interference or hindrance, consistent with applicable laws and regulations.

18.10 Protection of Air Space. Nothing contained in this Agreement shall grant to Concessionaire any rights whatsoever in the air space above County property. In that regard, County reserves the right to take any action whatsoever that it considers necessary to protect the aerial approaches of the Airport against obstruction, including, but not limited to demolition or removal of structures upon the Assigned Areas, together with the right to prevent Concessionaire from erecting or permitting to be erected any Improvement which, in the opinion of County, would limit the usefulness of or interfere with the operations at the Airport, or constitute a hazard to aircraft.

18.11 Utility Easements. County reserves the right to maintain such utility easements and/or licenses on Assigned Areas as may now or in the future be determined to be necessary to serve the needs of the Airport, and Concessionaire agrees to take this Agreement subject to said easement and/or license requirements. Such easements and/or licenses will be used for, but not limited to, the installation of water distribution, sewage collection, underground electrical and telephone conduits, above ground street lighting, and power poles.

18.12 Waiver of Claims. Concessionaire hereby waives any claim against Broward County and its officers, commissioners and employees for any consequential damages, including without limitation any loss of anticipated profits, caused by (a) any failure of County to comply with any obligations hereunder; (b) any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof; or (c) by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable, or delaying the same or any part thereof, from being carried out; or (d) any change in the operation or configuration of, or any change in procedures, governing the use of the Airport.

18.13 Damage to Airport Facilities. Concessionaire shall be responsible for all damage to the Airport caused by the negligence of Concessionaire or any of Concessionaire's agents, including, but not limited to, damage to the Terminal areas, roadways, and all areas where any activities are performed by Concessionaire.

18.14 Visual Artists Rights Act. With respect to construction or installation of any Improvements on Assigned Areas and regarding the requirements of the federal Visual Artists Rights Act of 1990, 17 U.S.C. §§ 106A and 113, as it may be amended from time to time (the " Visual Artists Rights Act"), Concessionaire agrees that it shall not (a) hire any artist or permit any agent, contractor, or other party, to hire any artist for the purpose of installing or incorporating any work of art into or at any Assigned Areas, or (b) permit the installation or incorporation of any work of art into or at any Assigned Areas without the prior written approval of County. Concessionaire shall provide such documentation as County may request in connection with any such approval, which

approval may be withheld by County for any reason. Any approval of County may be conditioned upon the execution by the artist of a waiver of the provisions of the Visual Artists Rights Act, in form and substance acceptable to County.

18.15 Survival. Upon termination or expiration of this Agreement, Concessionaire shall remain liable for all obligations and liabilities that have accrued prior to such termination or expiration. Notwithstanding any provision of this Agreement to the contrary, no obligation that has accrued but has not been satisfied under any prior agreements between the Parties shall terminate or be considered canceled upon execution of this Agreement. Rather, such obligation shall continue as if it had accrued under this Agreement until the obligation is satisfied.

18.16 No Recordation of Agreement. Concessionaire shall not record this Agreement or any memorandum thereof in the Official Records of Broward County, Florida, and a violation of this section by Concessionaire shall automatically void those provisions and portions of this Agreement that run to the benefit of Concessionaire.

18.17 If County incurs any expense in enforcing the provisions of this Agreement, whether suit be brought or not, Concessionaire agrees to pay all such County out-of-pocket costs and expenses including, but not limited to court costs, interest, and reasonable attorneys' fees and costs, through all trial, appellate, post-judgment, and bankruptcy proceedings.

18.18 Non-Liability of Government Representatives. No commissioner, director, officer, agent, or employee of County shall be charged personally or held contractually liable under any term or provisions of this Agreement or of any supplement, modification, or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

18.19 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 18 of this Agreement shall prevail and be given effect.

18.20 Other Fees and Charges. Concessionaire acknowledges that the Aviation Department may establish, from time to time, additional fees and charges for the use of various facilities, equipment and services provided by the Aviation Department and not leased to or specifically provided to Concessionaire in this Agreement, and the procedures relating to payment of same. Concessionaire shall pay for its use of such facilities, equipment and services at the rates and in the manner prescribed by the Aviation Department.

18.21 Rights in Documents and Work. Any and all reports, photographs, surveys, documents, materials, or other work created by Concessionaire specifically for County in connection with performing the services to be provided pursuant to this Agreement, whether finished or unfinished ("Documents and Work"), shall be owned by County, and Concessionaire hereby transfers to County all right, title, and interest, including any copyright or other intellectual

property rights, in or to the Documents and Work, and shall provide any documentation necessary to effectuate such transfer. Unless otherwise expressly stated herein, County has the right to use, reproduce, modify, distribute, and publicly display the Documents and Work, in whole or in part, in any medium and for any purpose, in perpetuity and without restriction. Concessionaire represents and warrants that it has all necessary legal rights to provide the Documents and Work and to grant County the rights stated in this Agreement. Concessionaire must deliver the Documents and Work to the Aviation Department within ten (10) business days after expiration or termination of this Agreement. Any compensation due to Concessionaire may be withheld until all Documents and Work are provided as set forth herein. Concessionaire shall ensure that the requirements of this section are included in all of Concessionaire's agreements with Subcontractor(s).

18.22 Public Records. Notwithstanding any other provision in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If Concessionaire is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Concessionaire shall:

18.22.1 Keep and maintain public records required by County to perform the services to be provided pursuant to this Agreement;

18.22.2 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 Applicable Law;

18.22.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law throughout the Term and after completion or termination of this Agreement if the records are not transferred to County; and

18.22.4 Upon expiration or termination of this Agreement, transfer to County, at no cost, all public records in possession of Concessionaire or keep and maintain public records required by County to perform the services to be provided pursuant to this Agreement. If Concessionaire transfers the records to County, Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt. If Concessionaire keeps and maintains the public records, Concessionaire shall meet all requirements of Applicable Law 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.

If Concessionaire receives a request for public records regarding this Agreement, Concessionaire must immediately notify the Aviation Department in writing and provide all requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

Concessionaire must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that Concessionaire contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Concessionaire asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, Concessionaire must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Concessionaire must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by Concessionaire as Restricted Material, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Concessionaire, or the claimed exemption is waived. Any failure by Concessionaire to strictly comply with the requirements of this section shall constitute Concessionaire’s waiver of County’s obligation to treat the records as Restricted Material. Concessionaire must 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 nondisclosure of Restricted Material in response to a third-party request.

**IF CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONCESSIONAIRE’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-359-6977, JAGARASSINO@BROWARD.ORG, 320 TERMINAL DRIVE, SUITE 200, FORT LAUDERDALE, FL 33315.**

18.23 Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Concessionaire and all Subcontractors that are related to this Agreement. Concessionaire and all Subcontractors shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form or in a form capable of conversion into written form within a reasonable time; upon request by County, Concessionaire and all Subcontractors shall make same available to County in written form at no cost and allow County to make copies. Concessionaire shall provide County with reasonable access to Concessionaire’s facilities, and County shall be allowed to interview all employees to discuss matters pertinent to the performance of this Agreement.

Concessionaire and all Subcontractors shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit

findings, whichever is longer. This section shall survive any dispute or litigation between the Parties, and Concessionaire expressly acknowledges and agrees to be bound by this section throughout the course of any dispute or litigation with County. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Concessionaire hereby grants County the right to conduct such audit or review at Concessionaire's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Concessionaire shall make all such records and documents available electronically, in common file formats, and/or via remote access, if and to the extent requested by County.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment based upon such entry. Concessionaire shall refund to County any overcharged amount identified as a result of an audit, regardless of the amount of the overcharge. If the overcharge exceeds five percent (5%) of the total contract charges audited by County, Concessionaire shall, in addition to refunding the overcharged amount, pay liquidated damages in the amount of fifteen percent (15%) of the overcharged amount as just compensation for damages incurred by County due to the overcharge, including, but not limited to, County's administrative costs and loss of potential investment returns (including interest). Any adjustments or payments due as a result of such audit must be made within thirty (30) days after presentation of County's findings to Concessionaire.

Concessionaire shall ensure that the requirements of this section are included in all agreements with all Subcontractor(s).

18.24 Independent Contractor. Concessionaire is an independent contractor of County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing the services to be provided pursuant to this Agreement, neither Concessionaire nor its agents shall act as officers, employees, or agents of County. Concessionaire shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

18.25 Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a Party to this Agreement and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a Party to this Agreement.

18.26 Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement.

18.27 Third-Party Beneficiaries. Neither Concessionaire nor County intends to primarily or directly 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.

18.28 Notices. Unless otherwise stated herein, for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). A Party may change its notice address by giving notice of such change in accordance with this section.

FOR COUNTY:  
Broward County Aviation Department  
Attn: Director of Aviation  
320 Terminal Drive, Suite 200  
Fort Lauderdale, Florida 33315  
Email address: mgale@broward.org

FOR CONCESSIONAIRE:  
Smarte Carte, Inc.  
Attn: Chief Legal Officer  
4455 White Bear Parkway  
St. Paul, Minnesota 55110  
Email address: schultzg@smartecarte.com *with copy to zitelman@smartecarte.com*

18.29 Subcontracting; Assignment; Change of Control. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for approved subcontracting, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Concessionaire without the prior written consent of County. Any change of control (as defined herein) shall be deemed an assignment. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.

For purposes of this section, "change of control" means: (a) a transfer of more than fifty percent (50%) of the ownership interests in Concessionaire, whether in a single transaction or a series of related transactions; (b) a merger, consolidation, or other reorganization that results in a change in voting control in Concessionaire or in the entity that controls Concessionaire's business; or (c) the sale, lease, or transfer of all or substantially all of Concessionaire's assets. A change of control does not include (i) a transfer to an entity wholly owned, directly or indirectly, by Concessionaire or its parent, or (ii) a transfer between existing owners of Concessionaire that does not result in a change in majority ownership; provided, however, that any such transfer shall not relieve

Concessionaire of its obligations under this Agreement unless County expressly agrees otherwise in writing.

18.30 Confidential Information; Generative Artificial Intelligence. Unless expressly authorized in this Agreement or in writing in advance by the Aviation Department, Concessionaire is strictly prohibited from disclosing, uploading, or otherwise making available to third parties, directly or indirectly, including but not limited to through utilization of generative artificial intelligence tools, any exempt, confidential, sensitive security, or personal information of County. Concessionaire must ensure that any use of generative artificial intelligence tools by Concessionaire or its Subcontractors does not involve the disclosure of exempt, confidential, sensitive security, or personal information, including without limitation for large language model learning or training. Concessionaire must implement and maintain appropriate technological and operational safeguards to ensure compliance with the obligations of this section.

18.31 Conflicts. Neither Concessionaire nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Concessionaire's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the Term, none of Concessionaire's officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Concessionaire is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person's expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude Concessionaire or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Concessionaire is permitted pursuant to this Agreement to utilize Subcontractors to perform the services to be provided pursuant to this Agreement, Concessionaire shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Concessionaire.

18.32 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. 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 shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

18.33 Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction or contrary to Applicable Law, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

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

18.35 Interpretation. The titles and 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 any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” 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 subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

18.36 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision within an article or section of this Agreement, the article or section shall prevail and be given effect.

18.37 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. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

18.38 Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Concessionaire.

18.39 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

18.40 Payable Interest.

18.40.1 Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to Concessionaire for any reason, whether as prejudgment interest or

for any other purpose, and Concessionaire waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

18.40.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

18.41 Incorporation by Reference. Any and all Recital clauses stated above 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.

18.42 Multiple Originals and Counterparts. This Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same agreement.

18.43 Use of County Name or Logo. Concessionaire shall not use County's name or logo in marketing or publicity materials without prior written consent from the Aviation Department.

18.44 Polystyrene Food Service Articles. Concessionaire shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.172, Broward County Administrative Code.

18.45 Anti-Human Trafficking. By execution of this Agreement by an authorized representative of Concessionaire, Concessionaire hereby attests under penalty of perjury that Concessionaire does not use coercion for labor or services, as such terms are defined in Section 787.06, Florida Statutes. Under penalties of perjury, the undersigned authorized representative of Concessionaire declares that they have read the foregoing statement and that the facts stated in it are true.

18.46 General Civil Rights Provisions. In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin, creed, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds Contractor and subcontractors from the bid solicitation period through the completion of the contract.

Any reference to "the Contractor" in this section refers to Concessionaire.

18.47 Civil Rights – Title VI Assurances. Concessionaire shall abide by and comply with the nondiscrimination requirements set forth in **Exhibit G**, to the extent same are applicable by law, rule, regulation, or federal grant requirements

18.48 Federal Fair Labor Standards Act (Federal Minimum Wage). This Agreement incorporates by reference the provisions of the Federal Fair Labor Standards Act (29 C.F.R. Part 201, et seq.), and the related regulations (collectively, “FLSA”), with the same force and effect as if fully restated herein. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Concessionaire must comply with the FLSA and has full responsibility to monitor compliance with the FLSA. Concessionaire must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

18.49 Occupational Safety and Health Act of 1970. This Agreement incorporates by reference the requirements of the Occupational Safety and Health Act of 1970 (29 C.F.R. Part 1910) (“OSHA”) with the same force and effect as if fully restated herein. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Concessionaire retains full responsibility to monitor its compliance and its Subcontractors’ compliance with the applicable requirements of the OSHA. Concessionaire 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.

18.50 Airport Security Requirements. Concessionaire must comply with the Airport Security Requirements as set forth in **Exhibit H**.

18.51 Airport Issued Identification Media, Public Area Business Purpose Media, and Emergency Response Training. All employees, agents, representatives, contractors, and Subcontractors of Concessionaire shall obtain Airport Issued Identification Media or Public Area Business Purpose Media, and complete emergency response training, as required by Section 2-43 of the Code. Concessionaire shall comply with the requirements of Section 2-43 of the Code, including the requirement that Concessionaire compensate its employees, agents, representatives, contractors, and Subcontractors for time spent completing the emergency response training.

18.52 Access to Records and Reports. If this Agreement is funded in whole or in part by a Federal grant, in addition to all other retention requirements of this Agreement, Concessionaire must maintain an acceptable cost accounting system. Concessionaire agrees to provide County, the FAA, and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers and records of Concessionaire that are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Concessionaire agrees to maintain all books, records and reports required under this Agreement for a period of not less than three (3) years after final payment is made and all pending matters are closed.

(The remainder of this page is intentionally left blank.)

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 Contractor, signing by and through its duly authorized representative.

COUNTY

ATTEST:

Broward County, by and through  
its Board of County Commissioners

By: \_\_\_\_\_  
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  
115 South Andrews Avenue, Suite 423  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600

Digitally signed by Kailie  
Rush  
Date: 2026.05.07  
16:55:20 -04'00'  
By \_\_\_\_\_  
Kailie Rush (Date)  
Assistant County Attorney

Digitally signed by Keoki  
Baron  
Date: 2026.05.07  
16:54:05 -04'00'  
By \_\_\_\_\_  
Keoki Baron (Date)  
Senior Assistant County Attorney

KR/ch  
Smarte Carte Agreement  
04/28/2026  
#1225368.5

**SELF-SERVICE BAGGAGE CARTS CONCESSION AGREEMENT  
BETWEEN BROWARD COUNTY AND SMARTE CARTE, INC.**

CONCESSIONAIRE

**SMARTE CARTE, INC.**

Greg Schultz

Digitally signed by Greg  
Schultz  
Date: 2026.05.04  
17:50:09 -05'00'

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

Authorized Signer

Greg Schultz, Chief Legal Officer

\_\_\_\_\_  
Print Name and Title

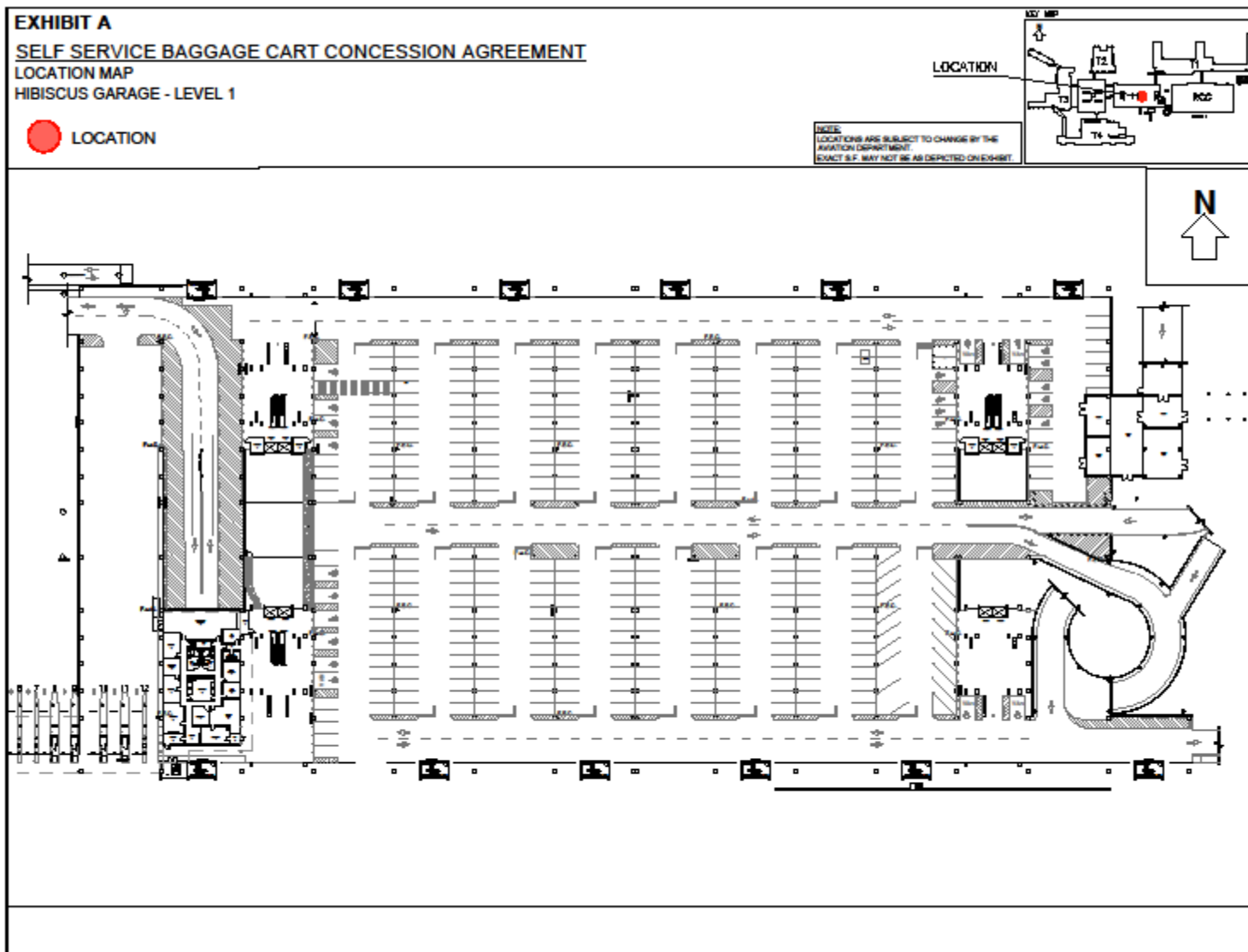
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

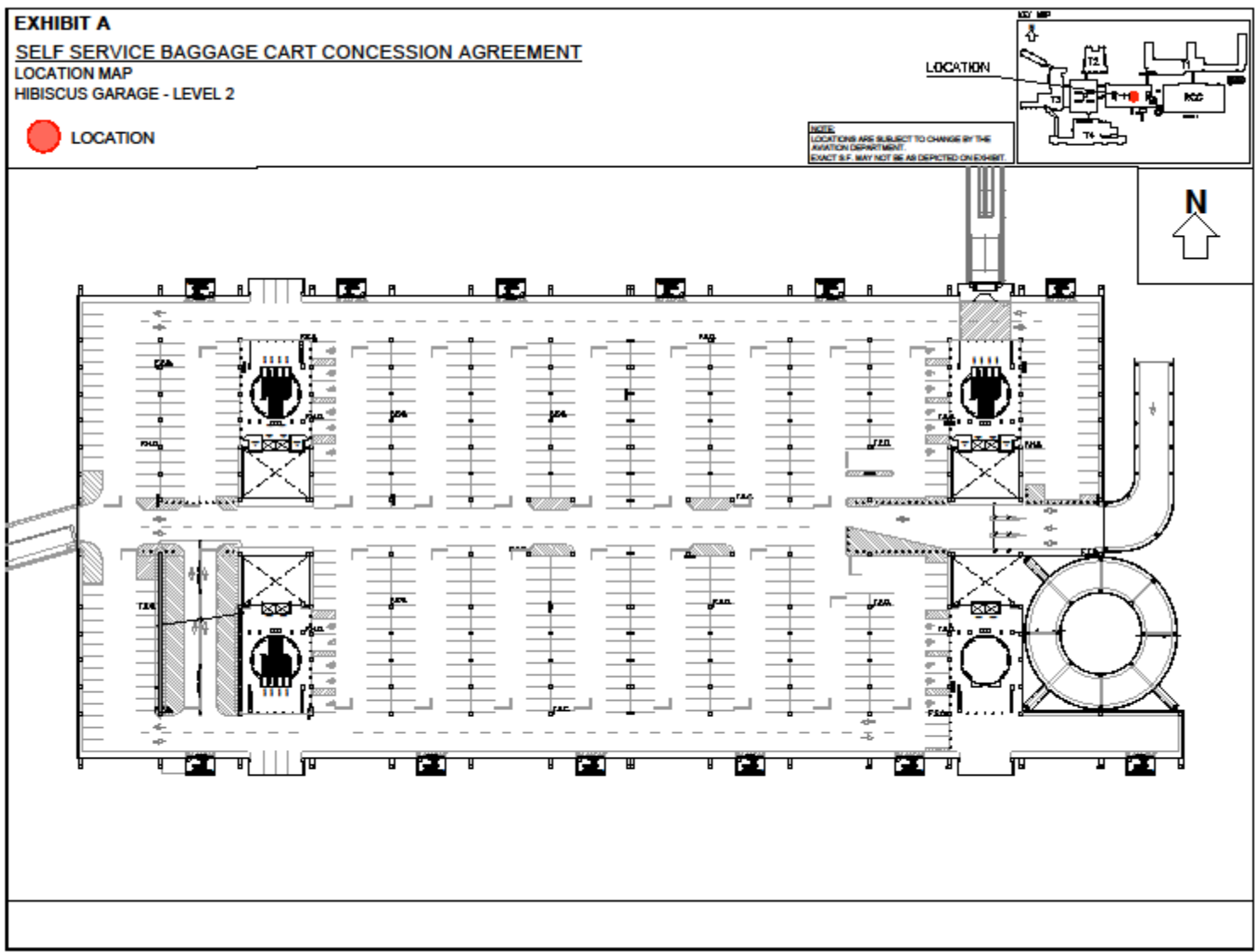
**EXHIBIT A – ASSIGNED AREAS**

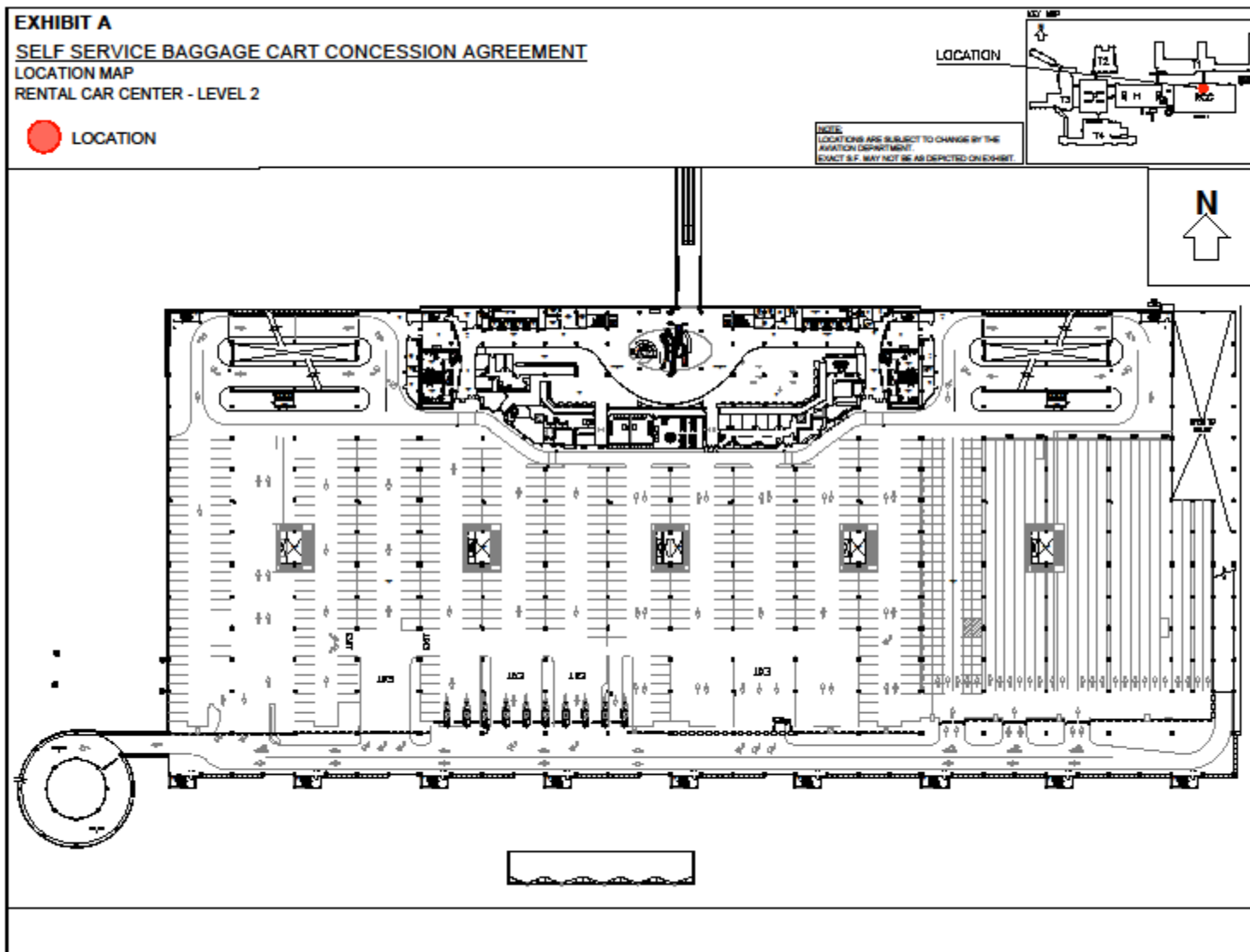
Terminal/Garage	Location	Equipment Type
Terminal 1, Departure Level		
	Location #1, east end, curbside	Galaxy Kiosk
	Location #2, west end of Terminal 1, curbside (along the wired wall)	Galaxy Kiosk
Terminal 1, Arrival Level		
	Location #1, between baggage carousel #1 and #2	Galaxy Kiosk
	Location #2, between baggage carousel #2 and #3	Galaxy Kiosk
	Location #3, between baggage carousel #3 and #4	Galaxy Kiosk
	Location #4, between baggage carousel #5 and #6	Galaxy Kiosk
Terminal 2, Departure Level		
	Location #1, east end, curbside	Galaxy Kiosk
	Location #2, west end, curbside	Galaxy Kiosk
Terminal 2, Arrival Level		
	Location #1, adjacent to baggage carousel #1	Galaxy Kiosk
	Location #2, between baggage carousel #1 and #2	Galaxy Kiosk
	Location #3, adjacent to baggage carousel #3	Galaxy Kiosk
Terminal 3, Departure Level		
	Location #1 north end, curbside	Galaxy Kiosk
	Location #2, south end, curbside	Galaxy Kiosk
Terminal 3, Arrival Level		
	Location #1, between baggage carousel #2 and #3	Galaxy Kiosk
	Location #2, adjacent to baggage carousel #3	Galaxy Kiosk
	Location #3, adjacent to baggage carousel #5	Galaxy Kiosk
	Location #4, between baggage carousel #5 and #6	Galaxy Kiosk
Terminal 4, Departure Level		
	Location #1, west end, curbside	Galaxy Kiosk
	Location #2, east end, curbside	Galaxy Kiosk
	Location #3, east end, curbside, adjacent to employee bus stop	Galaxy Kiosk
Terminal 4, Arrival Level		
	Location #1, adjacent to baggage carousel #1	Galaxy Kiosk

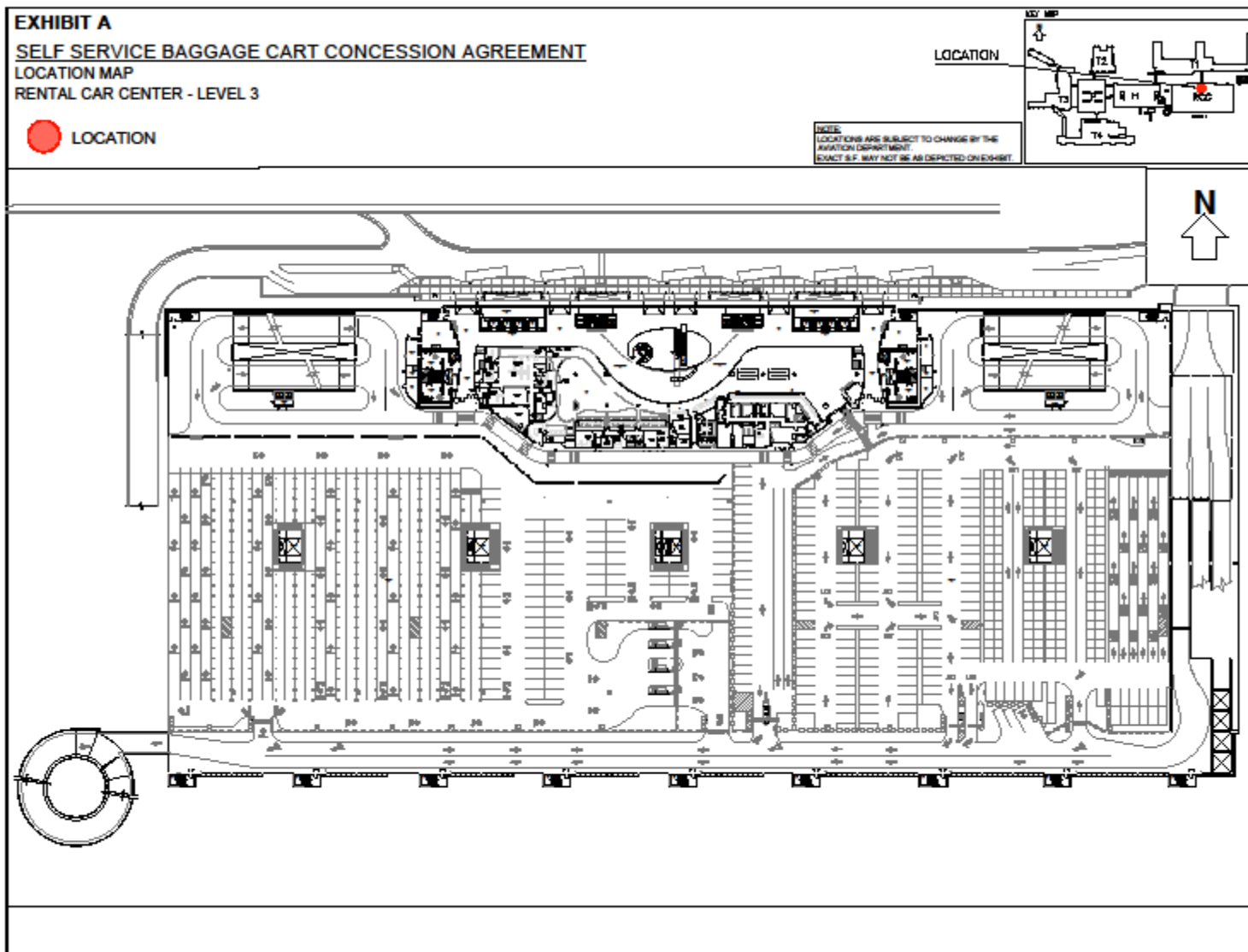
	Location #2, between baggage carousel #3 and #4	Galaxy Kiosk
Terminal 4, Federal Inspection Station (FIS)		
	Temporary Location #1, near Global Entry passenger entrance	Enterprise, Then Atlas Kiosk
	Temporary Location #2, near choke #3	Enterprise, Then Atlas Kiosk
	Temporary Location #3, near queuing	Enterprise, Then Atlas Kiosk
Terminal 1, Federal Inspection Station (FIS)		
	Location #1, alongside wall	Atlas Kiosk
	Location #2, between baggage carousel #1 and #2	Enterprise, Then Atlas Kiosk
	Location #3, between baggage carousel #2 and #3	Enterprise, Then Atlas Kiosk

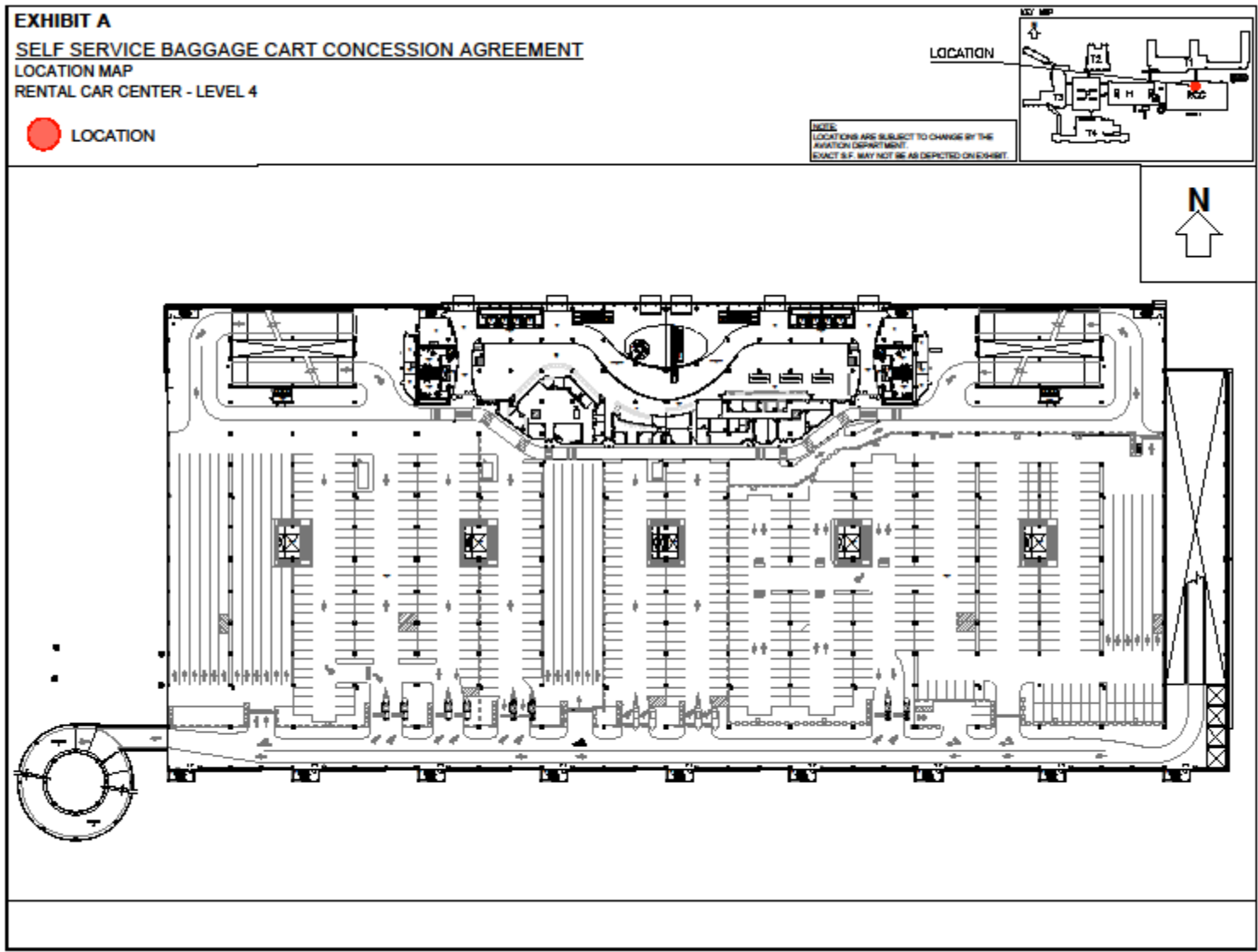
Terminal/Garage	Location	Equipment Type
Hibiscus Garage		
Level 1	Location #1, north side, adjacent to the RED Core	Enterprise
Level 2	Location #1, north end, at the top of escalators, YELLOW Core	Enterprise
Rental Car Center		
Level 2	Location #1, east end, inside National Rent A Car ready return area	Enterprise
	Location #2, east end, inside Alamo Rent A Car ready return area	Enterprise
Level 3	Location #1, curbside center Busway, adjacent to Bus Stop #4	Enterprise
	Location #2, east end, inside Avis Rent A Car ready return area.	Enterprise
	Location #3, west end, inside Hertz Rent A Car ready return area.	Enterprise
Level 4	Location #1 east end, inside Budget Rent A car ready return area	Enterprise
	Location #2, center, behind the Sixt Rent A Car Booth in the ready return area.	Enterprise
	Location #3, west end, adjacent to the Dollar/Thrifty Rent A Car Booth in the ready return area.	Enterprise
Terminal 1 and 2 Support Space		
	Terminal 1, Ticketing Level	
	Terminal 2, Departure Level	

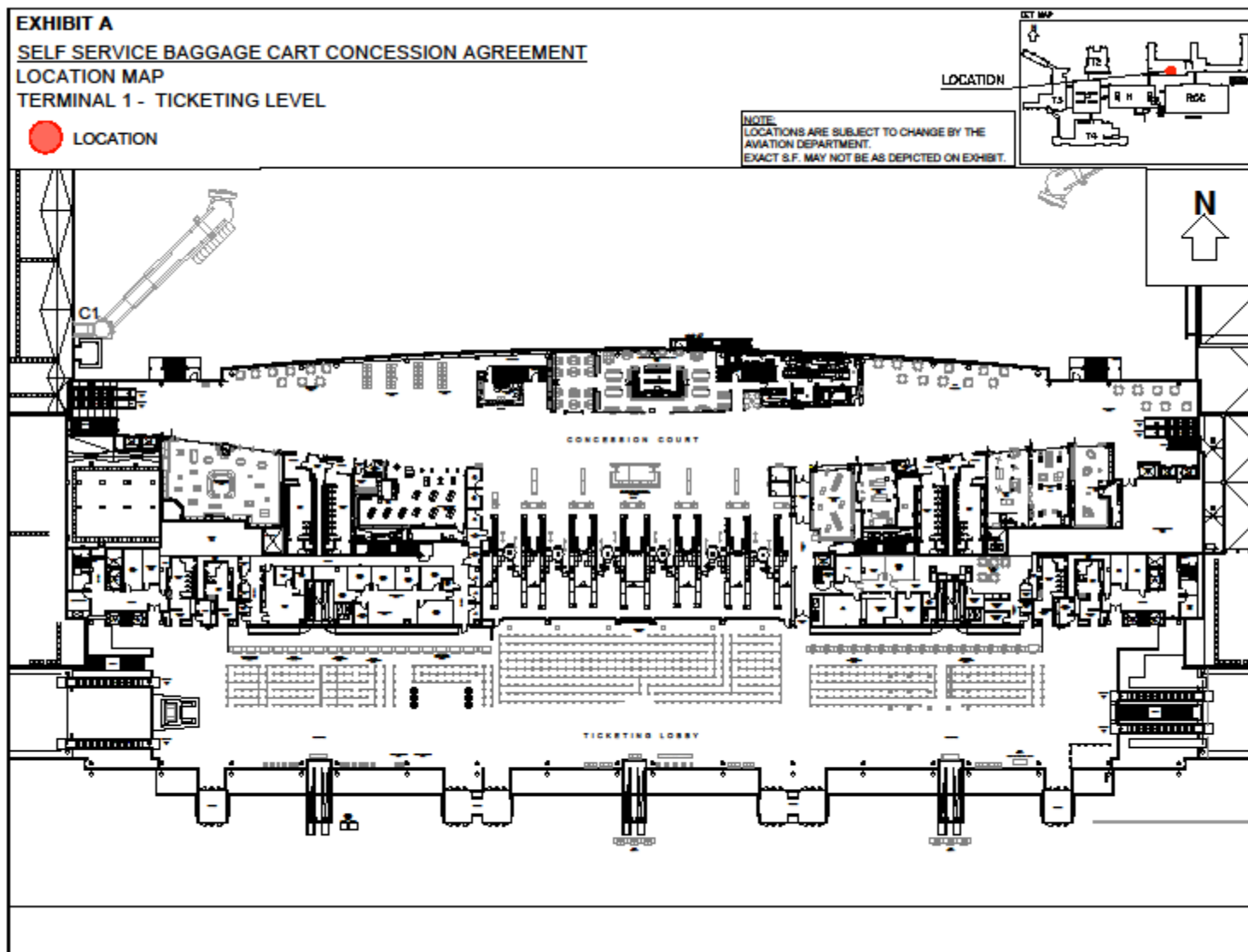


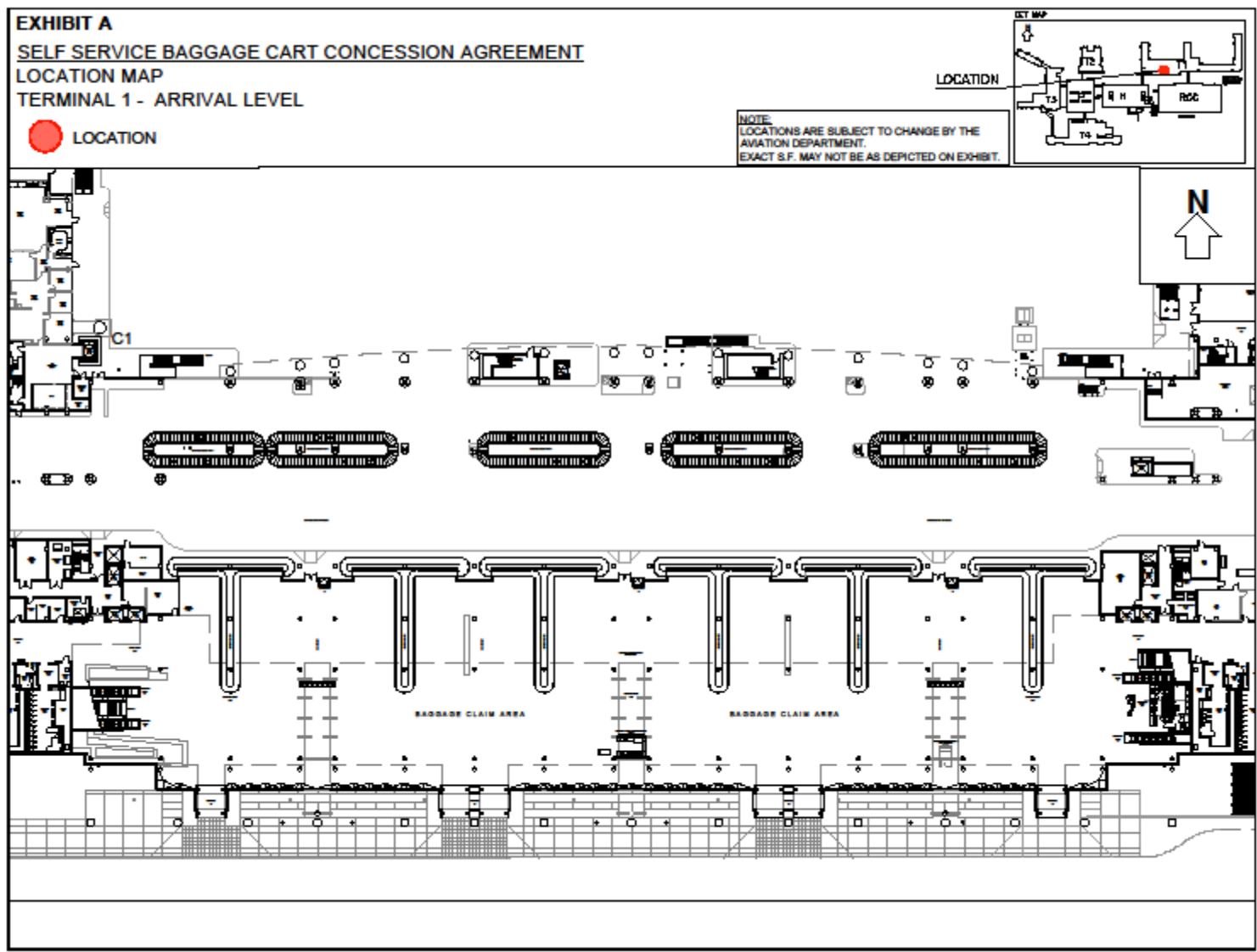


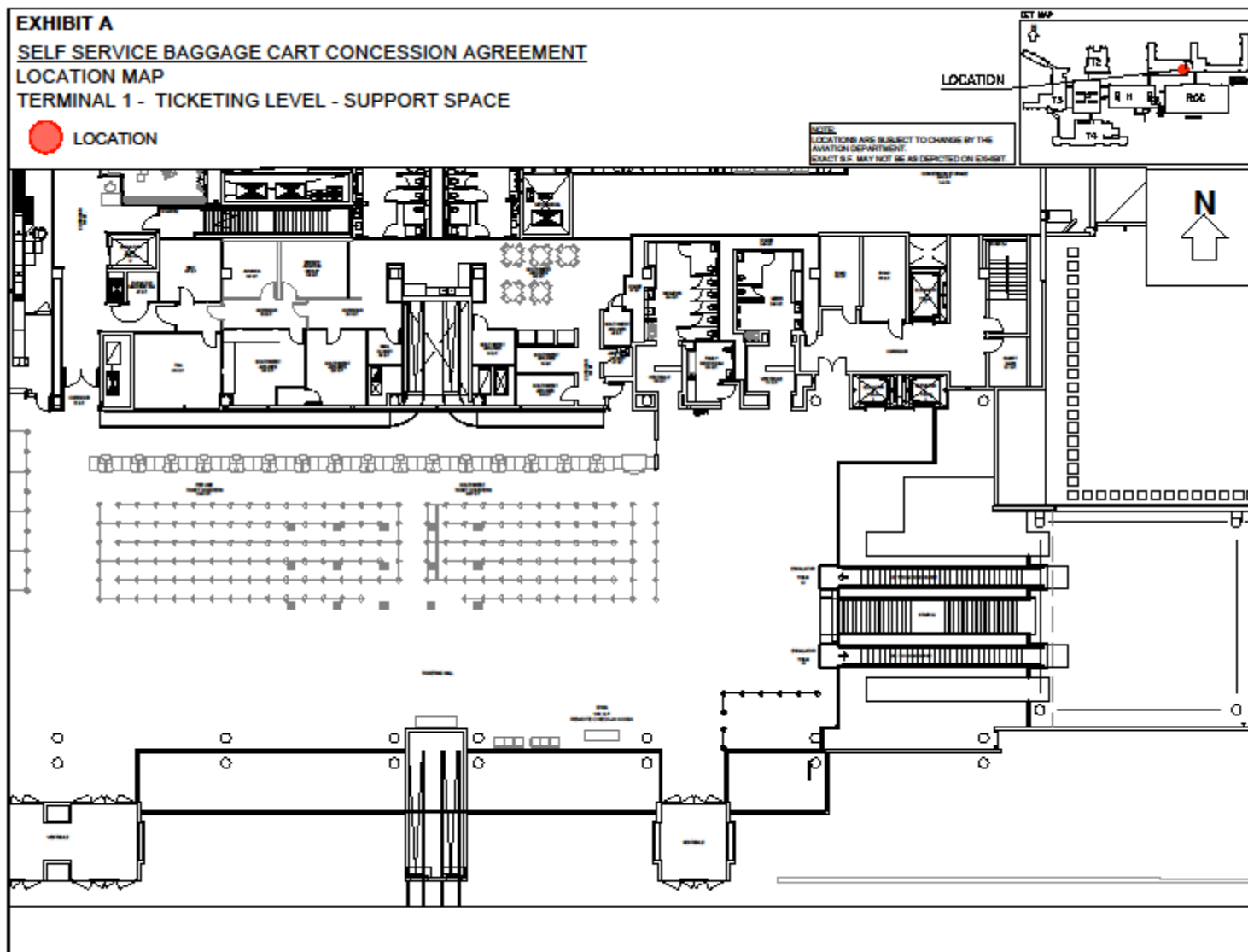


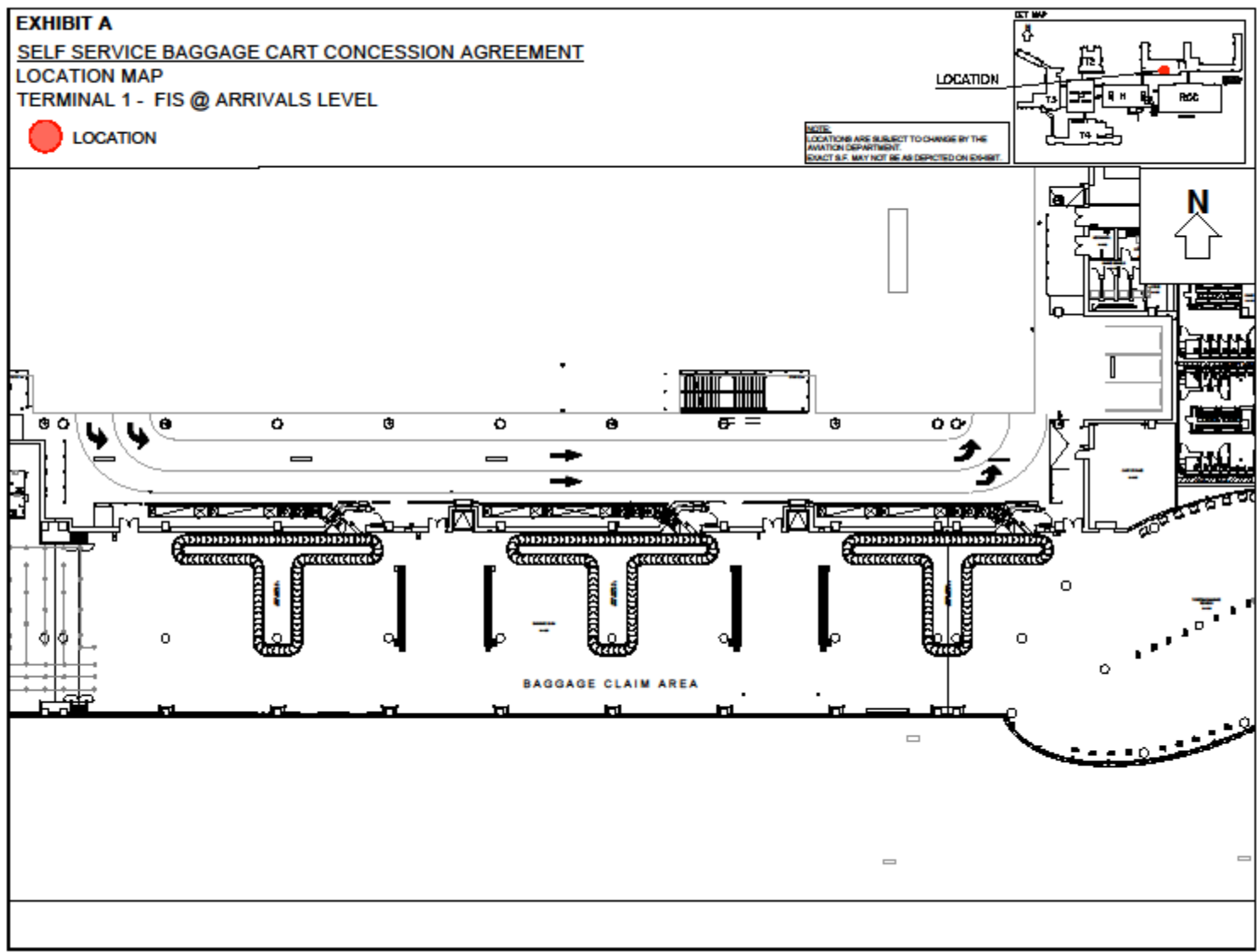


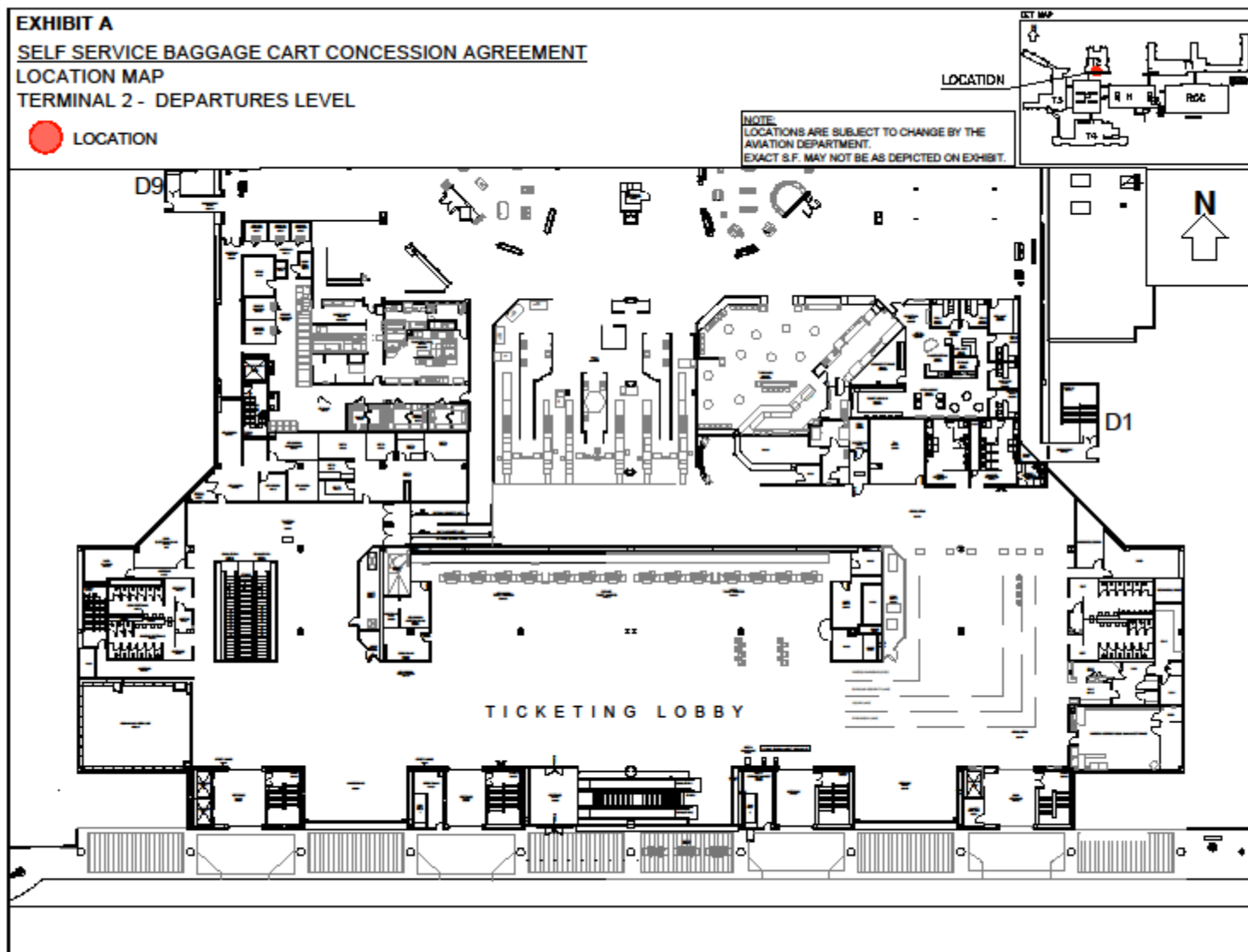


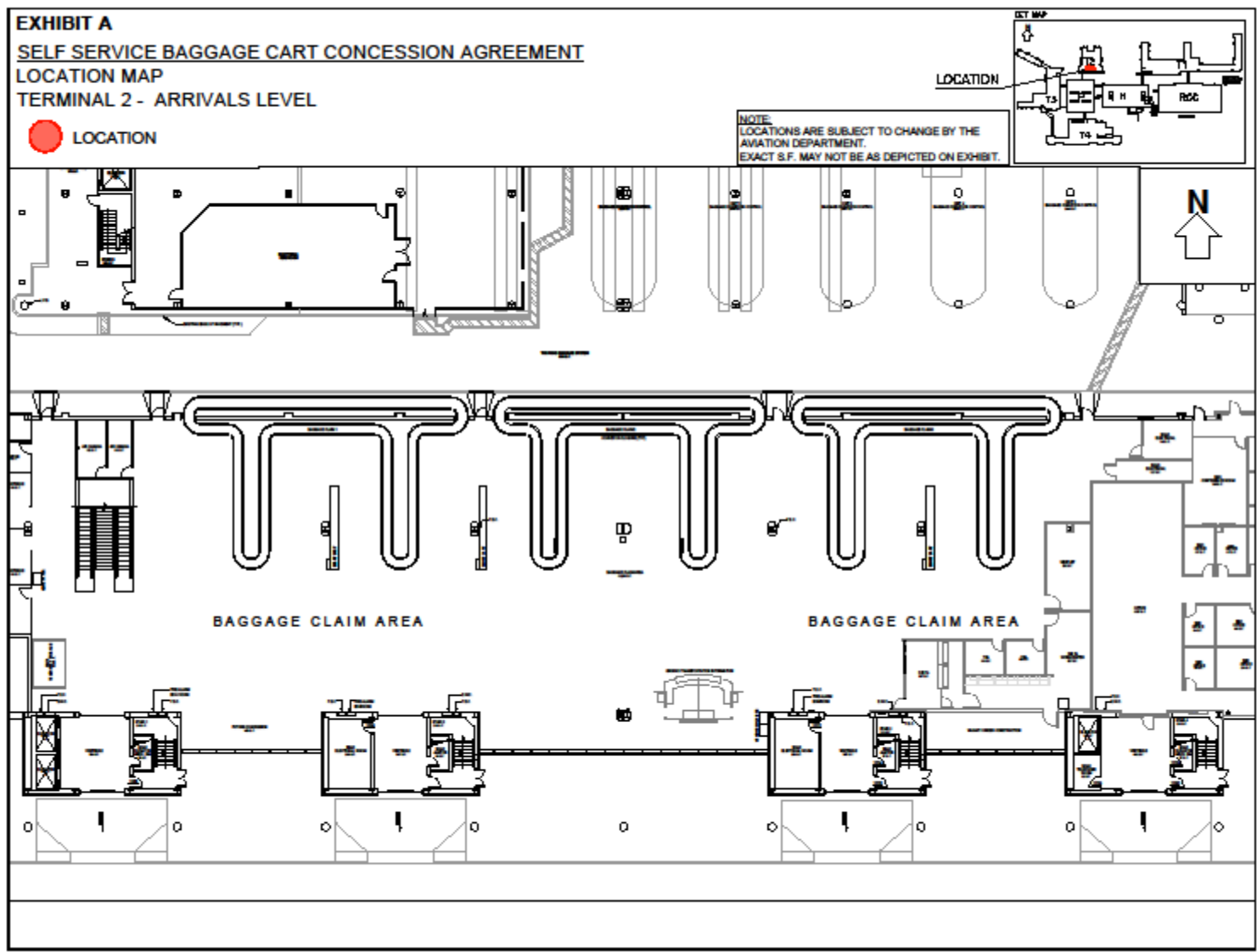


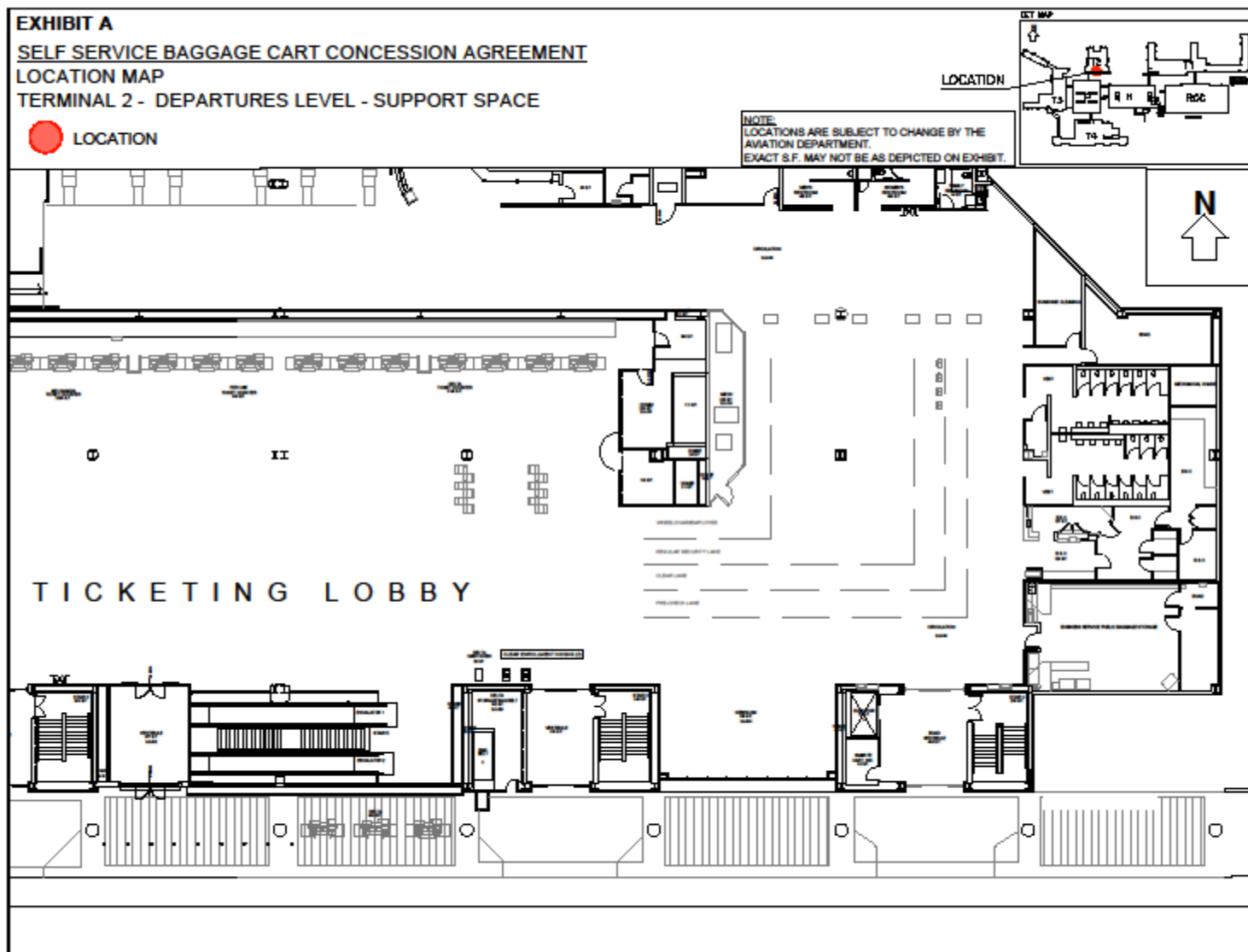


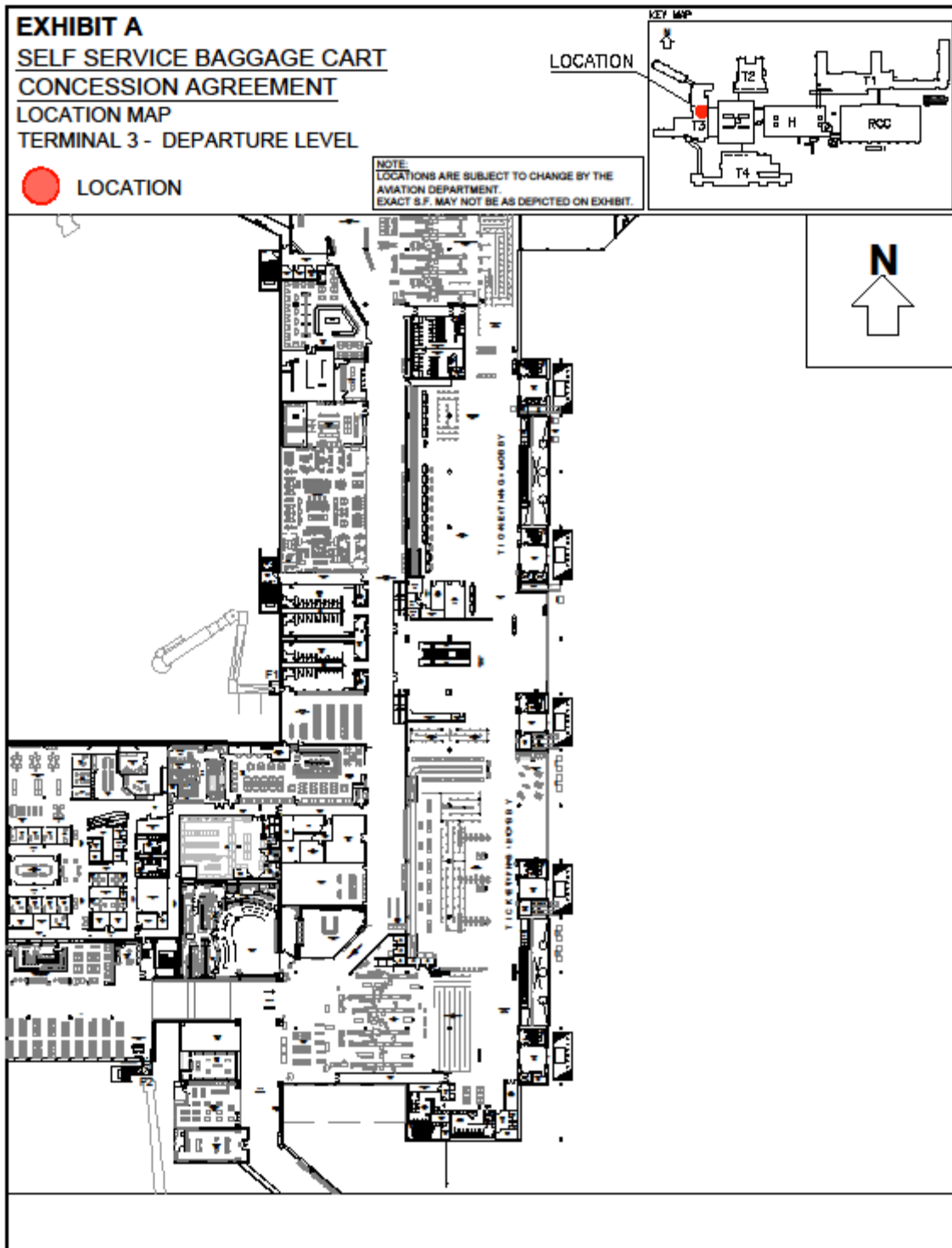


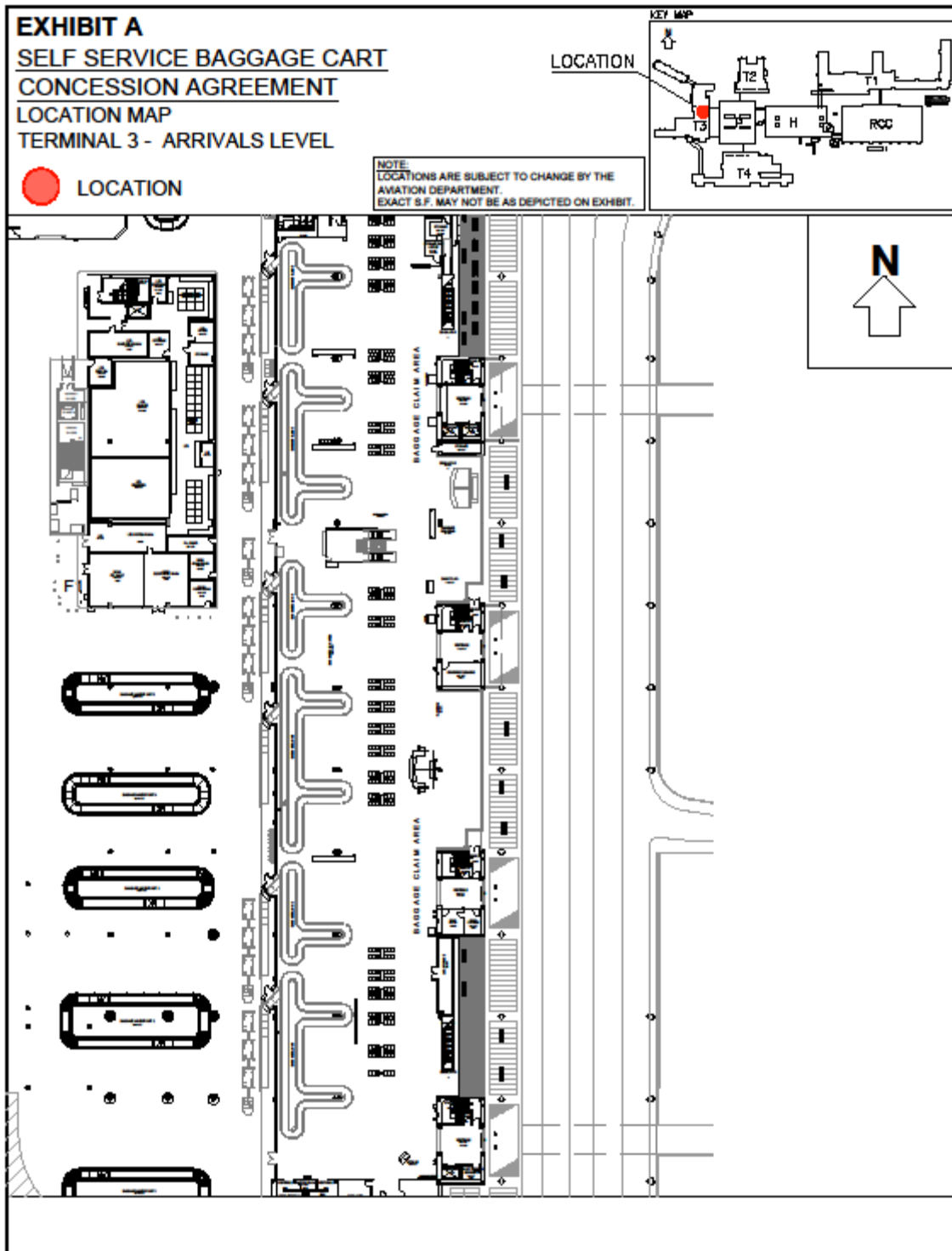


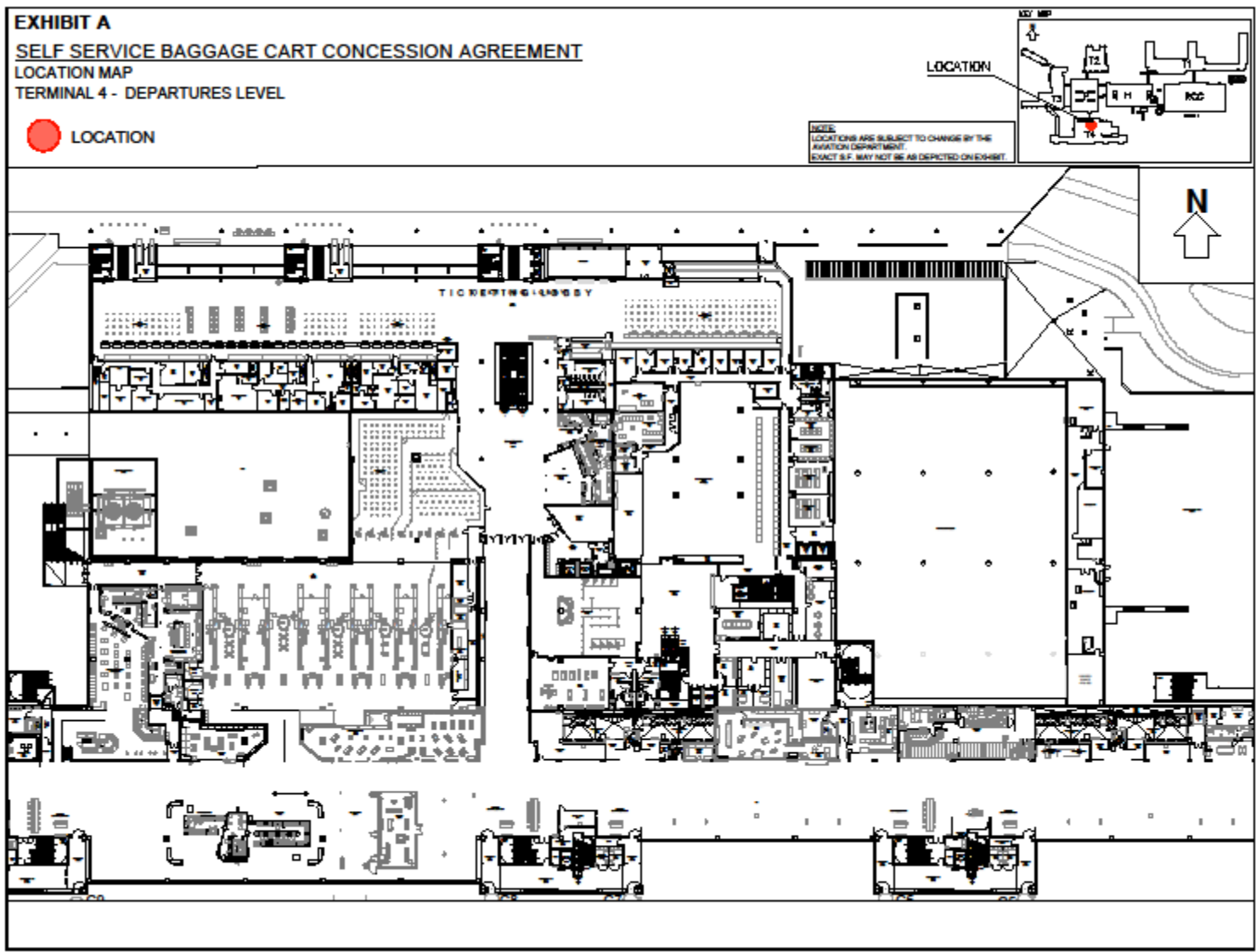


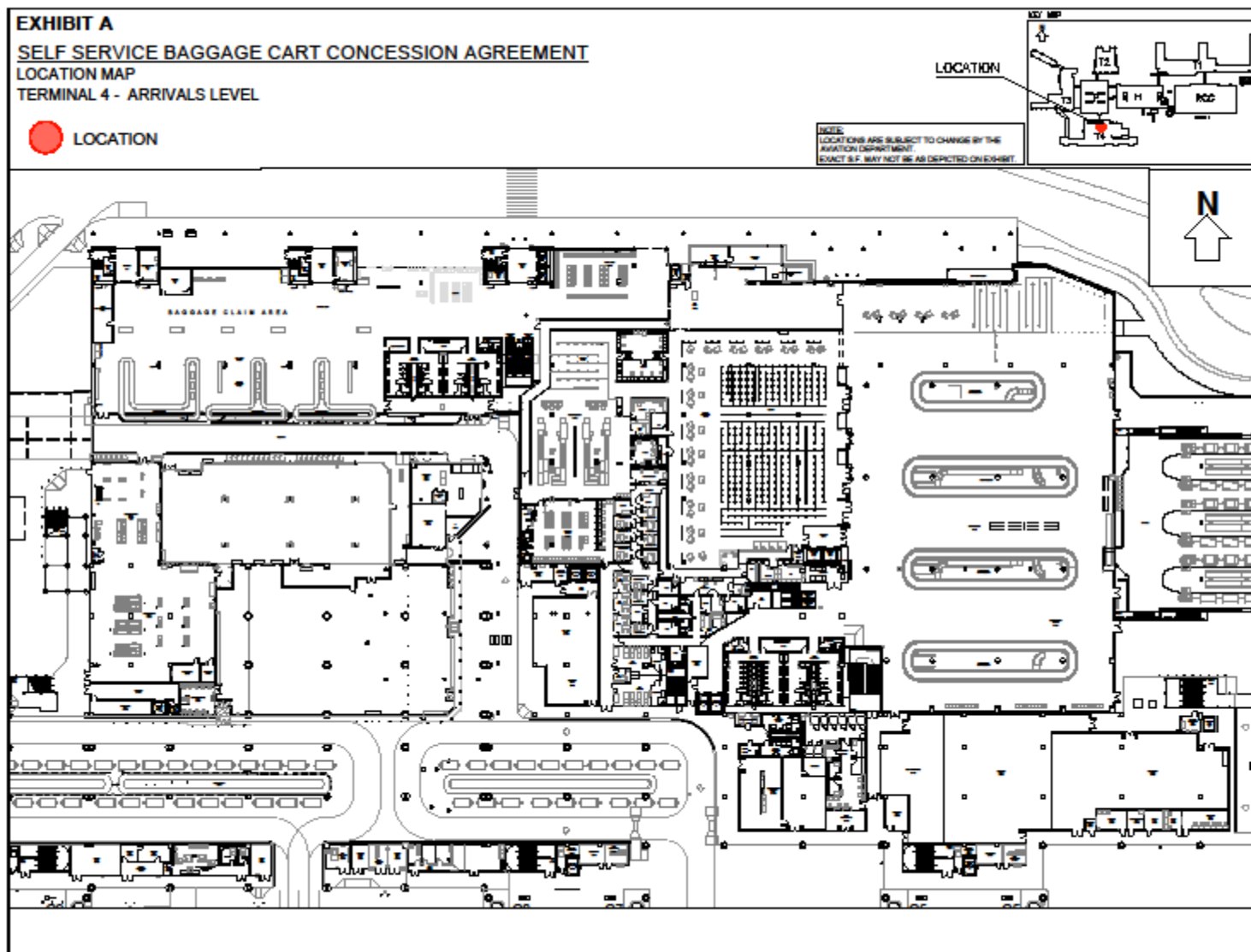












**EXHIBIT B – APPROVED PRICING**

<b>Contract Year</b>	<b>Price Per Cart</b>
Contract Year 1	\$7.00
Contract Year 2	\$7.00
Contract Year 3	\$8.00
Contract Year 4	\$8.00
Contract Year 5	\$8.00
Contract Year 6	\$9.00
Renewal Term(s)	\$9.00

## **EXHIBIT C – EQUIPMENT REPLACEMENT/REFURBISHMENT REQUIREMENT**

### **Carts:**

As required in Article 3 of the Agreement, Concessionaire shall provide a minimum of six hundred fifty (650) new Carts within twelve (12) months following the Commencement Date.

### **Cart Management Units (CMUs):**

As required in Article 3 of the Agreement, Concessionaire shall install new CMUs and refurbish certain existing CMUs, as described below, within twelve (12) months following the Commencement Date.

**Galaxy** – The Galaxy CMUs are to be installed in the domestic arrival areas and the departure curbside areas. A total of twenty-two (22) Galaxy CMUs will be installed.

**Atlas** – The Atlas CMUs are to be installed in the international arrival halls. A total of six (6) Atlas CMUs will be installed.

**Enterprise** – For the more remote areas of the Airport (e.g., the Rental Car Center, the parking garages) Concessionaire shall refurbish certain existing Enterprise CMUs, subject to approval by the Aviation Department. For such existing Enterprise CMUs, Concessionaire shall refurbish, equip with updated electronics, re-decal, and then relocate the CMUs as approved by BCAD. Approximately ten (10) refurbished Enterprise CMUs, subject to approval by the Aviation Department, will be installed.

Specifications for the above-referenced equipment are included in the attached product sheet.



### QUALITY MANUFACTURING

Crafted in Germany to meet strict quality standards, made from premium steel, and built to endure the toughest environments.



### EASY MANUEVERABILITY

Our extended staking spacer guarantees smaller turning circles for easy movement when pushing or maneuvering through the unique airport environment.



### SPACE SAVING

Our innovative nested design provides a space-saving solution for both storage and transportation of our luggage carts.





smartecarte®

## DESIGN DETAILS

### Materials & Surfaces

Our luggage carts are engineered and rigorously tested to deliver long-lasting performance in the demanding environment of airport use. They feature durable thick tubing, UV-resistant plastics, and a multi-layer surface coating that provides excellent corrosion resistance.

### Quality Casters & Tires

Our tires feature a natural rubber tread and a noise-dampening plastic hub, offering minimal maintenance, wear, and no residue. The double-sealed ball bearing ensures smooth rolling in any weather or conditions.

## SPECIFICATIONS

- ✓ **Cart Dimensions:** Height - 41" x Width - 25" x Depth - 38"
- ✓ **Load Capacity:** 400 lbs
- ✓ **Cart Weight:** 57lbs
- ✓ **Frame Construction:** Electro Polished Steel
- ✓ **Nesting Depth:** 10.4" (10 carts nested in 132" of space)
- ✓ **Wheel:** Natural rubber tread with double sealed ball bearing
- ✓ **Caster Diameter:** 7"
- ✓ **Advertising Panel :** 20.5" x 16.7"



smartecarte®

Connected Products & Services

## Proposed Equipment – Galaxy Kiosk

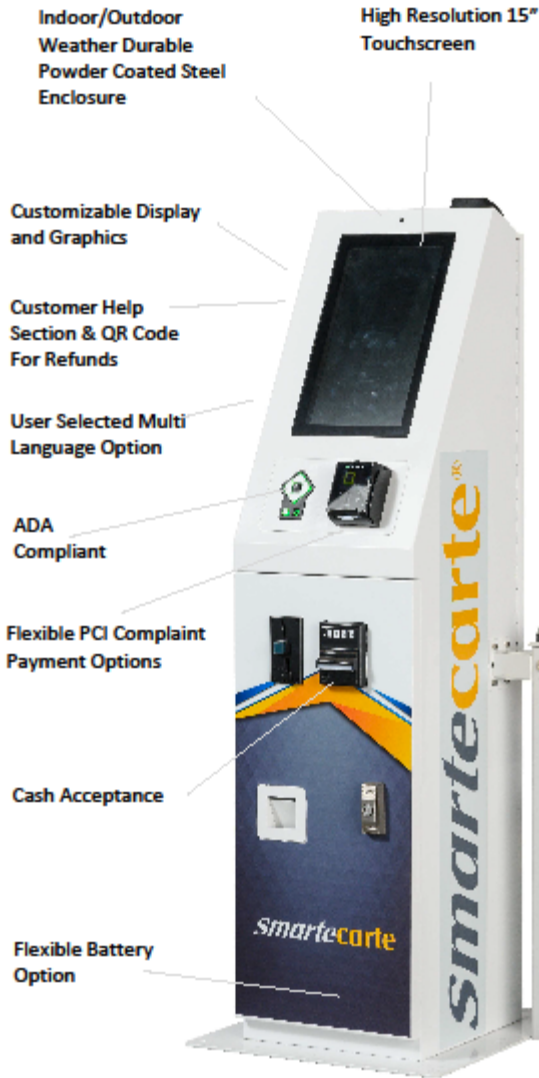


### Galaxy Cart Management Kiosk

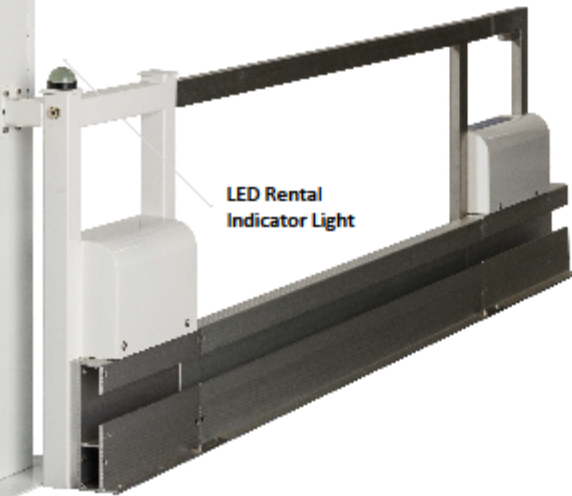
Smartecarte, Inc. is proposing to install the Galaxy cart Management Kiosks in the Domestic arrivals and departure curbside locations. These units have a touch screen, upgraded credit card processing capability and are perfectly suited for the high-volume domestic areas.

#### Top Features

- Touchless, Tap, and Mobile payment options
- ADA compliant
- Indoor & outdoor (cover not needed)
- PCI compliant
- Multi language options



Kiosk Specifications	
Dimensions	H: 57.6", W: 18.7", D: 15"
Construction	Cold Rolled Steel with weather resistant powder coat finish
Power	120VAC, 240 VAC or battery power. 100 Watts peak use indoor, 330 Watts peak use outdoor
Communication	4G Cell modem, wireless LAN
Track Options	Standard: 25 Feet (31 Cart Capacity) Minimum: 15 Feet (17 Cart Capacity) Maximum: 60 Feet (52 Cart Capacity)



Connected Products & Services

## Proposed Equipment – Atlas Kiosk



### Atlas Cart Management Kiosk

Smartecarte, Inc. is proposing to install the Atlas cart Management Kiosks in the international arrivals hall locations. These units have a larger screen, provide change in bills and are perfectly suited for the high-volume arrivals halls.

- Manufactured in the United States with 16-gauge steel and powder coated to withstand rain, wind, extreme temperatures.
- Large 27" touchscreen display. (outdoor equipped with high bright LEC panel with auto dimming)
- Easy to use ADA compliant interface with user selected multi language options (Standard options: English & Spanish) and step-by-step instructions that guide the customer through the rental process.
- Customizable attract loop screen for marketing, information or video needs.
- Modern PCI compliant payment acceptance of all major credit cards as well as Touchless Payment, Tap to Pay & Chip/Pin.
- Bill pay (\$1, \$5, \$10, & \$20) and dispensing (\$1 & \$5). Ability to go fully cashless or cash only as needed.
- User selected digital receipt options. (email or mobile)
- QR code scanning for issues or refund assistance.
- Camera for customer support & monitoring.
- Space saving design allow for easy installation with minimum impact to location with configurations to meet the needs of the space and traffic flow.
- Real time data feeds, remote monitoring, alerting and reporting to ensure 99% uptime.
- Flexible, agnostic battery power option for locations with minimal power or relocation
- LED indicator light to communicate guest can remove cart.
- Guest feedback option at the end of rental.
- 24/7/365 Customer support and monitoring.
- \$0.25 given for carts returned to a unit.
- Can be secured to create zero damage to hard flooring.



Specifications	
Dimensions	Indoor - H: 57.6", W: 18.7", D: 15" Outdoor - H: 57.6", W: 18.7", D: 18"
Base Plate Dimensions	Indoor - W: 26", D: 23" Outdoor - W: 26", D: 25"
Power	120VAC, 240 VAC or Battery Power. 106 Watts peak use indoor, 332 watts peak use outdoor. 53 watts standby indoor, 79 watts standby outdoor.
Communications	4G Cell modem, wireless LAN or stored transactions if power or internet disrupted
Track Options	Standard: 25 Feet (31 Cart Capacity) Minimum: 15 Feet (17 Cart Capacity) Maximum: 60 Feet (52 Cart Capacity)



## Proposed Equipment – Enterprise Kiosk



### Cart Management Kiosk

Our gold standard in reliability, our Enterprise CMU can handle any environment. The time-tested simple form and function makes cart rental quick and easy for low traffic locations. We have an inventory of existing stainless steel Enterprise kiosks in Ft. Lauderdale that are in excellent condition. Smarte Carte proposes to repurpose and continue to operate some of the existing units (after upgrades and aesthetic changes) in the exterior areas of the airport including rental car, parking garages, etc.

- Manufactured in the United States with steel and powder coated to withstand rain, wind, extreme temperatures.
- Modern PCI compliant payment acceptance of all major credit cards as well as Touchless Payment, Tap to Pay & Chip/Pin.
- Bill pay (\$1, \$5, \$10, & \$20) and coin dispensing (\$1 & \$0.25). Ability to go fully cashless or cash only as needed.
- Overall space saving design allows for easy installation with minimal impact to location, while allowing for easy relocation due to construction and infrastructure improvements.
- Real time data feeds, remote monitoring, alerting and reporting to ensure 99% uptime.
- Lighted overhead sign making cart rental visible from a distance.
- Easy step by step instructions to guide guest through rental process.
- Battery powered for locations with limited power or relocation.
- 24/7/365 Customer support and monitoring.
- \$0.25 given for carts returned to a unit.
- Can be secured to create zero damage to hard flooring.



Specifications	
Dimensions	H: 54", W: 14", D: 30"
Tri Sign Total Height	Up to 108"
Construction	Stainless Steel or Cold Rolled Steel with weather resistant powder coat finish
Power	120VAC, 240 VAC or battery power. 70 Watts peak, 17 watts standby (+1500 watts with heater option)
Communications	4G Cell modem, wireless LAN or stored transactions if power or internet disrupted
Track Options	Standard: 25 Feet (31 Cart Capacity) Minimum: 15 Feet (17 Cart Capacity) Maximum: 60 Feet (52 Cart Capacity)

10



**EXHIBIT D – MONTHLY REVENUE REPORT**

**SELF-SERVICE BAGGAGE CART CONCESSION  
MONTHLY REVENUE REPORT  
BROWARD COUNTY AVIATION DEPARTMENT  
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT**

CONCESSIONAIRE: \_\_\_\_\_

Reporting Period (Month, Year): \_\_\_\_\_

**Terminal 1**

Location	Uses	Gross Revenue	Rate	Total Privilege Fee
Arrivals			5%	
Departures			5%	
FIS			5%	

**Terminal 2**

Location	Uses	Gross Revenue	Times: Percentage Fee	Total Privilege Fee
Arrivals			5%	
Departures			5%	

**Terminal 3**

Location	Uses	Gross Revenue	Times: Percentage Fee	Total Privilege Fee
Arrivals			5%	
Departures			5%	

**Terminal 4**

Location	Uses	Gross Revenue	Times: Percentage Fee	Total Privilege Fee
Arrivals			5%	
Departures			5%	
FIS			5%	

**Garages/Ground Transportation Areas (GTAs)**

Location	Uses	Gross Revenue	Times: Percentage Fee	Total Privilege Fee
Hibiscus			5%	
Cypress 6-9			5%	
RCC 2-4			5%	
GTAs			5%	

**Monthly Revenue Report  
Self-Service Baggage Carts**

Month: \_\_\_\_\_

**Total Cart Usage and Fee Calculation**

Uses	Gross Revenues	Privilege Fee Rate	Total Privilege Fee
		5%	

**Advertising Revenue**

Advertising Revenues	Advertising Rate	Total Advertising Fees
	50%	

**Monthly Fee Calculation:**

Total Privilege Fees: \$ \_\_\_\_\_

Plus

Total Advertising Fee: \$ \_\_\_\_\_

Total Amount Due County (Concessionaire) \$ \_\_\_\_\_

The undersigned hereby certifies that the above figures represent a true and complete statement of all Gross Revenues and Advertising Revenues from the Self-Service Baggage Cart Concession at Fort Lauderdale-Hollywood International Airport,

Prepared by: \_\_\_\_\_ Title: \_\_\_\_\_  
Name (print): \_\_\_\_\_ Date: \_\_\_\_\_

**MONTHLY REVENUE REPORTS** shall be submitted so that they are received by the 15th day of the month following the month that is covered by the report.

Submit Report electronically to:  
BCAD-AR@broward.org

With a copy of the report sent to:  
Aviation Business Manager – Concessions  
Broward County Aviation Department  
320 Terminal Drive, Suite 200  
Fort Lauderdale, FL 33315

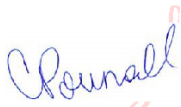
Checks shall be made payable to Broward County or the Broward County Aviation Department and shall be sent to:

Broward County Aviation Department, Finance Division  
320 Terminal Drive, Suite 200  
Fort Lauderdale, FL 33315

## **EXHIBIT E – QUARTERLY ACDBE UTILIZATION REPORT**

Quarterly Activity Reports are to be submitted, within 20 days after each calendar quarter, directly in Broward County's Business Management System (BMS), powered by B2Gnow at <https://broward.gob2g.com/>.

**EXHIBIT F – MINIMUM INSURANCE REQUIREMENTS**

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	MINIMUM LIABILITY LIMITS		
				Each Occurrence	Aggregate
<b>GENERAL LIABILITY - Broad form</b> <input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Premises-Operations <input type="checkbox"/> XCU Explosion/Collapse/Underground <input checked="" type="checkbox"/> Products/Completed Operations Hazard <input checked="" type="checkbox"/> Contractual Insurance <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Personal Injury <b>Per Occurrence or Claims-Made:</b> <input checked="" type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <b>Gen'l Aggregate Limit Applies per:</b> <input type="checkbox"/> Project <input type="checkbox"/> Policy <input type="checkbox"/> Loc. <input type="checkbox"/> Other _____	☑	☑	Bodily Injury		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$2,000,000	\$5,000,000
			Personal Injury		
			Products & Completed Operations		
<b>AUTO LIABILITY</b> <input checked="" type="checkbox"/> Comprehensive Form <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-owned <input checked="" type="checkbox"/> Any Auto, If applicable <i>Note: May be waived if no driving will be done in performance of services/project.</i>	☑	☑	Bodily Injury (each person)		
			Bodily Injury (each accident)		
			Property Damage		
			Combined Bodily Injury and Property Damage	\$300,000 landside only \$5,000,000 airside	
<input type="checkbox"/> <b>EXCESS LIABILITY / UMBRELLA</b> <b>Per Occurrence or Claims-Made:</b> <input type="checkbox"/> Per Occurrence <input type="checkbox"/> Claims-Made <i>Note: May be used to supplement minimum liability coverage requirements.</i>	☑	☑			
<input checked="" type="checkbox"/> <b>WORKER'S COMPENSATION</b> <i>Note: U.S. Longshoremen &amp; Harbor Workers' Act &amp; Jones Act is required for any activities on or about navigable water.</i>	N/A	☑	Each Accident	STATUTORY LIMITS	
<input checked="" type="checkbox"/> <b>EMPLOYER'S LIABILITY</b>			Each Accident	\$1,000,000	
<input type="checkbox"/> <b>POLLUTION / ENVIRONMENTAL LIABILITY COSTS</b> ** this is required if consultant or it's subcontractor when testing or investigating by digging or drilling on any airport property or the use of any hazardous materials or the risk of disturbing any hazardous materials on airport property.	☑	☑	If claims-made form:		
			Extended Reporting Period of:	2 years	
			*Maximum Deductible:	\$25k	
<input checked="" type="checkbox"/> <b>PROFESSIONAL LIABILITY (ERRORS &amp; OMISSIONS) / TECH E&amp;O</b> Required if any software is used and maintained by company which utilizes the County's internet or any licensed professional is responsible for the operation or maintenance of the equipment..	N/A		Each Claim / Occurrence:	\$2,000,000	\$2,000,000
			If claims-made form Extended Reporting Period of:	3 years	
			*Maximum Deductible:	\$50,000	
Description of Operations: "Broward County" shall be listed as Certificate Holder and endorsed as an additional insured for liability, except as to Professional Liability. County shall be provided 30 day written notice of cancellation, 10 day notice of cancellation for non-payment. Vendor insurance shall provide primary coverage and shall not require contribution from the County, self-insurance or otherwise. Any self-insured retention (SIR) must be declared to and approved by County and may require proof of financial ability to meet losses. Vendor is responsible for all coverage deductibles unless otherwise specified in the agreement.					
<b>CERTIFICATE HOLDER:</b> Broward County 320 Terminal Drive Suite 200 Fort Lauderdale, FL 33315 :			 Digitally signed by COLLEEN POUNALL Date: 2026.03.31 16:26:52 -04'00' Risk Management Division		

## **EXHIBIT G – NONDISCRIMINATION AND OTHER FEDERAL REQUIREMENTS**

### **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964) including amendments thereto;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (P.L. 100-259) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681, et seq.).

**Compliance with Nondiscrimination Requirements:**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, creed, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21 including amendments thereto.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor’s noncompliance with the nondiscrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as County or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program:** This section applies only to leases of concession space in a terminal and any future deeds, leases, licenses, permits, or similar instruments entered into by the Sponsor with other parties for the construction or use of, or access to, space on, over, or under real property acquired or improved under the Airport Improvement Program.

A. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Concessionaire will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

B. With respect to concession agreements, in the event of breach of any of the above Non-discrimination covenants, County will have the right to terminate the concession agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said concession agreement had never been made or issued.

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## EXHIBIT H – AIRPORT SECURITY REQUIREMENTS

(a) Airport Security Program and Aviation Regulations. Concessionaire must comply with all security and other applicable requirements of the Federal Aviation Regulations applicable to Concessionaire, including, but not limited to, all regulations of the United States Department of Transportation, the Federal Aviation Administration, and the Transportation Security Administration. Concessionaire 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 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 Concessionaire and any Subcontractor personnel, including, but not limited to, employees, invitees, and guests of Concessionaire and any Subcontractor (collectively, "Concessionaire Personnel") observe these requirements. If required by the Aviation Department, Concessionaire shall conduct background checks of Concessionaire Personnel in accordance with applicable federal regulations. If as a result of any act or omission of Concessionaire, any Subcontractor, or Concessionaire Personnel, County incurs any fine and/or penalty imposed by any governmental agency, including, but not limited to, the United States Department of Transportation, the Federal Aviation Administration, or the Transportation Security Administration, or any expense in enforcing any federal regulations, including, but not limited to, airport security regulations or the rules and regulations of County, and/or any expense in enforcing County's Airport Security Program, then Concessionaire shall pay and/or reimburse to County all such fines, penalties, costs, and expenses, including all costs of administrative proceedings, court costs, and attorneys' fees and all costs incurred by County in enforcing this provision. Concessionaire shall rectify any security deficiency or other deficiency as may be determined as such by County or the United States Department of Transportation, Federal Aviation Administration, the Transportation Security Administration, or any other federal agency with jurisdiction. If Concessionaire fails to remedy any such deficiency, County may do so at the sole cost and expense of Concessionaire. County reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency.

(b) Media Requirements and Access to Security Identification Display Areas. Concessionaire shall be responsible for requesting the Aviation Department to issue Airport Issued Identification Media or Public Area Business Purpose Media (collectively, "Media"), as applicable, to all Concessionaire Personnel. In addition, Concessionaire shall be responsible for the immediate reporting of all lost or stolen Media, the immediate return of the Media of Concessionaire Personnel transferred from the Airport or terminated from the employ of Concessionaire or any Subcontractor, and the immediate return of all Media issued to all Concessionaire Personnel upon expiration or termination of Concessionaire's agreement with County. Before any Media is issued to Concessionaire Personnel, Concessionaire must comply with the requirements of applicable federal regulations with regard to fingerprinting for criminal history record checks and security threat assessments, and must require that such Concessionaire Personnel complete security training programs conducted by the Aviation Department. Concessionaire 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 Media and those not returned to the Aviation Department in accordance

with these provisions. The Aviation Department has the right to require Concessionaire to conduct background investigations and to furnish certain data on Concessionaire Personnel before the issuance of Media, which data may include the fingerprinting of applicants for such Media.

(c) Operation of Vehicles on the AOA. Concessionaire shall ensure that all Concessionaire Personnel operating a motor vehicle of any type or kind on the AOA are in full compliance with all laws, rules, and regulations regarding the operation of motor vehicles on the AOA, including but not limited to, Section 2-25 of the Code. All motor vehicles and equipment of Concessionaire or of any Subcontractor operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department, which identification must be displayed as required by the Aviation Department.

(d) Consent to Search/Inspection. Concessionaire'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. Concessionaire and any Subcontractor shall not allow any Concessionaire Personnel to enter the AOA unless and until such Concessionaire Personnel 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, Concessionaire Personnel who do not execute such consent-to-search/inspection form shall not be employed or retained by Concessionaire or by any Subcontractor at the Airport in any position requiring access to the AOA or allowed entry to the AOA by Concessionaire or by any Subcontractor.

(e) Nondisclosure Agreement. If any Concessionaire Personnel are required by a contract with County to access or otherwise be in contact with Sensitive Security Information ("SSI"), as defined and construed under federal law, such Concessionaire Personnel will be required to execute an SSI Nondisclosure Agreement provided by the Aviation Department.

The provisions of this Exhibit shall survive the expiration or any other termination of this Agreement.

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